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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERITECH CORP.,	)	
Transferor	)	
	)	
AND	)	
	)	
SBC COMMUNICATIONS, INC.,	)	CC Docket No. 98-141
Transferee	)	
	)	ASD File No. 99-49
For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules	)	

SECOND MEMORANDUM OPINION AND ORDER

Adopted: September 7, 2000 **Released:** September 8, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we grant the request of SBC Communications, Inc. (SBC) for a modification of certain conditions contained in the *SBC/Ameritech Merger Order*.[1] Specifically, we find that the public interest is served by allowing SBC's incumbent local exchange carriers (LECs) to own certain equipment used to provide advanced services throughout SBC's service area, so long as SBC takes the actions described in this Order to ensure that competitors have the ability to compete effectively in the advanced services marketplace. The action we take today should enable competing carriers to provide advanced services in SBC's territory, while at the same time facilitating SBC's deployment of advanced services to the mass market.

2. At the outset, we stress that the modification contained in this Order is limited only to

[1] Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (1999) (*SBC/Ameritech Merger Order*), *appeal pending sub nom. Telecommunications Resellers Assoc. v. FCC*; *see* Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau (Feb. 15, 2000) (*SBC Request*).

certain equipment installed in remote terminals and the necessary supporting equipment installed in central offices. By modifying the commitments adopted in the *SBC/Ameritech Merger Order* to allow this arrangement, we expect consumers will benefit not only from a more rapid deployment of advanced services, but from the increased choices that stem from the competitive safeguards contained in SBC's proposal. Moreover, we emphasize that this Order addresses only the commitments adopted in the *SBC/Ameritech Merger Order* and the harms addressed therein. Our interpretations and conclusions with respect to the *Merger Conditions* do not relieve SBC of any obligations under sections 251, 252, or any other provision of the Communications Act of 1934, as amended (the Act) and our implementing rules.[2] Nor do we intend the analysis or conclusions in this Order to constrain or otherwise affect our interpretation of those rules. Finally, we emphasize that we are examining issues related to competitive access to remote terminals in the *Collocation FNPRM*,[3] and that our decision herein does not prejudge any outcome in that proceeding.

II. BACKGROUND

3. On October 6, 1999, the Commission approved the transfer of control of licenses and lines from Ameritech Corporation (Ameritech) to SBC (SBC). During the course of the Commission's review, SBC and Ameritech proposed a set of voluntary commitments intended to promote the deployment of advanced services, open SBC's and Ameritech's in-region markets to competition, foster local competition out-of-territory, and improve residential telephone service.[4] Among its commitments to promote the deployment of advanced services, SBC and Ameritech proposed a condition that required the merged company to provide advanced services solely through a separate "Advanced Services Affiliate."[5] After carefully examining the separate affiliate proposal, the Commission concluded that an

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[2] *See* 47 U.S.C. §§ 251, 252; *SBC/Ameritech Merger Order* at Appendix C, n.2.

[3] *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, CC Docket 96-98, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98*, FCC 00-297, paras. 81-83, 103-12, 119-28 (rel. Aug. 10, 2000) (*Collocation Further Notice*).

[4] *See SBC/Ameritech Merger Order* at Appendix C. We refer to the commitments contained in Appendix C of the *SBC/Ameritech Merger Order* as "*Merger Conditions*" throughout this Order.

[5] *See id.* at Appendix C, paras. 1-13. The *Merger Conditions* incorporate for the most part the structural, transactional, and nondiscrimination safeguards provided in section 272 and the Commission's implementing rules. *See SBC/Ameritech Merger Order* at paras. 363-68, 460; *see also* 47 U.S.C. § 272(b), (c), (e); Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), *Second Order On Reconsideration*, 15 FCC Rcd 1161 (2000); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order), petition for review pending sub nom. SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), *First Order on Reconsideration*, 12 FCC Rcd 2297 (1997), *Second Order on Reconsideration*, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), *Third Order on Reconsideration*, FCC 99-242 (rel. Oct. 4, 1999). SBC has several affiliates deemed to be "Advanced Services Affiliates" for the purposes of the *Merger Conditions*. Advanced Services, Inc. (ASI) serves consumers in the former SBC states; Ameritech Advanced Data Services (AADS) operates in the former Ameritech states. *See* SBC Communications, Inc., SBC/AMERITECH MERGER CONDITIONS 1999 COMPLIANCE REPORT 19 (Mar. 15, 2000). For simplicity's sake, we refer to these affiliates in the singular.

Advanced Services Affiliate would mitigate the increased risk of discrimination faced by competing providers of advanced services and other carriers, while accelerating the deployment of advanced services.[6] In making its final decision, the Commission adopted the proposed commitments as express conditions of its approval of the license transfer.

4. Subsequently that month, SBC announced its "Project Pronto" initiative, which is a $6-billion infrastructure deployment throughout SBC's 13-state region.[7] Through its Project Pronto build-out, SBC plans to make Digital Subscriber Line (DSL) technology available to some 77 million consumers over a three-year period; 20 million of these consumers cannot receive any DSL service today because of technical and operational issues.[8] SBC also seeks to integrate its voice and data networks to transport traffic more efficiently. To do this, SBC plans to upgrade its local loop and backbone infrastructure, lay some 12,000 miles of fiber transmission facilities, and create 25,000 "neighborhood gateways." SBC's Project Pronto plan relies in large part upon the increased use of Digital Loop Carrier (DLC) systems to reduce overall costs.[9] In particular, SBC is planning to deploy an overlay network architecture consisting primarily of: (1) "Next Generation" DLC (NGDLC) systems installed at its remote terminal sites;[10] (2) ADSL Digital Line Unit Cards (ADLU Card, or generically, "plug-in card")

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[6] *SBC/Ameritech Merger Order* at paras. 3, 5, 60-62, 196, 207, 211 (finding that the separate affiliate proposal offsets the increased risk of discriminatory conduct), 441, 444 (finding that a separate affiliate will spur deployment of advanced services).

[7] SBC Communications, Inc., *SBC Launches $ 6 Billion Broadband Initiative* (Oct. 18, 1999) (disseminating information about SBC's Project Pronto initiative to the press) (*SBC Project Pronto Press Release*).

[8] *See id.* DSL technology permits the transmission of data over the existing copper loop at significantly higher speeds than can be achieved by current "dial-up" analog data transmission systems and circuit-switched network systems. *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, *Third Report and Order in CC Docket No. 98-147; Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912, paras. 7-9 (1999) (describing DSL technology) (*Line Sharing Order*), *appeal pending sub. nom United States Tel. Assoc. v. FCC*, No. 00-1012 (D.C. Cir. Jan. 18, 2000).

[9] A DLC system converts analog signals, from many copper loops that terminate at a remote terminal, into digital signals, multiplexes the signals, and transports them over fiber or copper to the central office. DLC systems are usually deployed to reduce the costs associated with constructing additional feeder pairs and to provide a flexible means for offering other telecommunications services. Typical applications for DLC systems include rural areas, quick growth areas (e.g., new sub-developments), campus environments, and industrial areas (e.g., office parks). *See Line Sharing Order* at paras. 88-92; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 24012, para. 165, n.313 (1998) (describing DLC systems); *see also id.* at Appendix C (noting that DLC systems impair the deployment of xDSL-based services); *also* Harry Newton, NEWTON'S TELECOMMUNICATIONS DICTIONARY 270 (16th ed. 2000)) (NEWTON'S TELECOMMUNICATIONS DICTIONARY) (describing DLC systems); Telcordia Technologies, Inc., INTEGRATED DIGITAL LOOP CARRIER SYSTEM GENERIC REQUIREMENTS, OBJECTIVES AND INTERFACE, GR-303-CORE (Dec. 1999).

[10] An "NGDLC system" is simply a DLC system designed for use with Synchronous Optical Networking (SONET) transport facilities. *See* Walter Goralski, ADSL AND DSL TECHNOLOGIES, 273 (1998); *see also* NEWTON'S TELECOMMUNICATIONS DICTIONARY 583 (defining NGDLC systems as "DLC [that] can receive and aggregate large amounts of bandwidth (higher than T-1)). DLC systems were originally designed for use with T-1 carrier on copper pairs, but this basic design has changed in light of developments in transport facilities. *See* NEWTON'S TELECOMMUNICATIONS DICTIONARY at 270. In addition to their SONET capabilities, NGDLC systems have more flexible and remote configuration capabilities than their predecessors, and may contain additional (continued....)

plugged into its NGDLC systems;[11] (3) Optical Concentration Devices (OCDs) in its central offices;[12] and (4) additional fiber transmission facilities between its central offices and remote terminals.[13] The end result of Project Pronto will be a network architecture that brings fiber closer to homes and businesses, so that DSL services will be available to approximately 80% of SBC's customers. Over this network architecture, SBC initially plans to provide high-speed Internet access to residential and business customers, and eventually hopes to provide video and voice over DSL, personal video conferencing, home networking, and other applications.[14]

5. On February 15, 2000, SBC filed a letter requesting an interpretation, waiver, or modification of the *Merger Conditions* to allow its incumbent LECs to own equipment – specifically, the ADLU Cards and the OCDs – used to provide advanced services as part of its Project Pronto initiative.[15] In its initial request, SBC stated that its incumbent LECs will provide (on a nondiscriminatory basis) a wholesale "Broadband Offering" that would allow its Advanced Services Affiliate and other carriers to provide ADSL service to consumers. On February 18, 2000, the Common Carrier Bureau (Bureau)

(Continued from previous page)
features. SONET is the North American standard for telecommunications transmission using fiber optic cables. The SONET standard includes definitions for a multiplexing structure, optical parameters, interfaces, service mappings, and network management support for existing and future services. *See* Telcordia Technologies, Inc., NOTES ON THE NETWORKS § 14.15 (Dec. 1997) (describing SONET).

[11] A plug-in ADLU Card is only one component of an NGDLC system. An NGDLC system typically contains several "channel bank assemblies," which are multiplexers used to provide service to end users. In each channel bank assembly, a carrier "plugs in" cards that are used to provide specific telecommunications services. For example, a carrier wishing to provide T-1 service to a customer will plug in a card with T-1 capabilities. Other plug-in cards allow carriers to more efficiently provide second lines to consumers by transforming a single phone line into two lines. The ADLU Card is a plug-in card used to provide ADSL service from an NGDLC system. The ADLU Card works in conjunction with other plug-in cards and software to provide such service. In addition to the channel bank assemblies and the associated plug-in cards, DLC systems (including NGDLC systems) also contain a common control assembly that contains multiplexing, power, and other capabilities. *See* Letter from Marian Dyer, Vice President, SBC Telecommunications, Inc. to Anthony J. Dale, Attorney, FCC (Mar. 1, 2000) (*SBC March 1, 2000 Letter*) (providing product literature and technical specifications for the OCD and the ADLU Card); SBC June 2, 2000 *Ex Parte* at 17, 20 (providing diagrams of NGDLC systems); *see also* Alcatel *Ex parte* (May 4, 2000) (*Alcatel May 4, 2000 Ex Parte*).

[12] The OCD is central office equipment that routes packet signals from several remote terminal sites to a carrier's packet switched network. Through this routing function, the OCD aggregates traffic from multiple remote terminal sites to a smaller number of outbound transport facilities. *See SBC Request* at 5.

[13] In SBC's proposed network architecture, the OCD is connected to the ADLU Cards housed in the NGDLC systems in the remote terminal sites by means of SONET transport facilities, either an Optical Carrier level 3 (OC-3) or OC-12 (i.e., 155.52 Mbps or 622.08 Mbps) signal. See *infra* Appendix B (providing diagram of the ADLU Card, transmission facilities, and the OCD, as deployed in SBC's planned network architecture); *see also* Alcatel USA, Inc., LITESPAN-2012 NEW WORLD DIGITAL LOOP CARRIER MULTISERVICE ACCESS/TRANSPORT PLATFORM WITH INTEGRATED ADSL (noting OC-3 and OC-12 capabilities of the system containing the ADLU Cards) (contained in *Alcatel May 4, 2000 Ex Parte*).

[14] *See* Communications Daily, *SBC Details $ 6 Billion Spending Plan to Increase Broadband Access*, 1999 WL 7580611 (Oct. 19, 1999).

[15] *SBC Request, supra*, note 1.

issued a public notice seeking comment on SBC's request.[16]

6. In the course of this proceeding, SBC provided additional information about its Broadband Offering and modified its proposal in response to issues raised by other parties.[17] Specifically, in its revised proposal SBC commits to: (1) provide all carriers (including its Advanced Services Affiliate) access to its Broadband Offering, alone and in combination with a voice offering, at rates, terms, and conditions that are just, reasonable, and nondiscriminatory and priced in accordance with the methodology applicable to unbundled network elements under sections 251 and 252; (2) make available additional features, functions, and capabilities of the plug-in ADLU Cards and other xDSL-capable plug-in cards that may become available for the host NGDLC system; (3) facilitate collocation, particularly with respect to remote terminals; (4) preserve existing copper transmission facilities; and (5) host industry collaborative sessions to address competitive access to remote terminals, as well as technical and operational issues related to its Broadband Offering.[18]

III. DISCUSSION

7. Before turning to the issues raised in SBC's request, we want to emphasize the narrow scope of this decision. We confine this Order to the narrow request before us – to interpret and, if necessary, waive or modify the ownership restrictions in the *Merger Conditions*.[19] We note that some

[16] Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, *Public Notice*, DA 00-335 (rel. Feb. 18, 2000). The following parties submitted comments: Alcatel USA, Inc. (Alcatel), Assocation for Local Telecommunications Services (ALTS), AT&T Corporation (AT&T), Bell Atlantic Corporation and GTE Corporation (Bell Atlantic/GTE or Verizon), the DSL Access Telecommunications Alliance (DATA), Global Telecommunications Consultants, Inc. (GTC), MCI Worldcom (MCIW), MGC Communications (Mpower), Prism Communications Services, Inc. (Prism), Public Serve Commission of Wisconsin (Wisconsin Commission), and Sprint Corporation (Sprint). The following parties submitted reply comments: Alcatel, AT&T, Competitive Telecommunications Association (Comptel), DATA, MCIW, GTC, Newpath Communications, Inc. (Newpath), Prism, United States Telecommunications Association (USTA). In addition, the following parties submitted *ex parte* letters, but did not file comments or reply comments in their own capacity: @Link Communications, Inc. (@Link), Advanced Telecommunications Group (ATG), Caprock Communications, Inc. (Caprock), Covad Communications, Inc. (Covad), Indiana Regulatory Utility Commission (Indiana Commission), Jato Communications, Inc. (Jato), Lucent Technologies, Inc. (Lucent), Northpoint Communications, Inc. (Northpoint), and Rhythms Netconnections, Inc. (Rhythms).

[17] *See* SBC *Ex parte* (Jul. 13, 2000) (*SBC July 13, 2000 Ex Parte*) (submitting proposed commitments); SBC *Ex parte* (Aug. 3, 2000) (*SBC August 2, 2000 Ex Parte*) (addressing additional issues raised in response to its proposal). Several parties filed ex parte letters addressing SBC's revised proposal. *See, e.g.*, Northpoint *Ex parte* (Jul. 19, 2000) (*Northpoint July 19, 2000 Ex Parte*); Jato *Ex parte* (Jul. 24, 2000) (Jato July 24, 2000 Ex Parte); ALTS *Ex parte* (Jul. 23, 2000) (*ALTS July 23, 2000 Ex Parte*); Rhythms *Ex parte* (Jul. 28, 2000) *(Rhythms July 28, 2000 Ex Parte*); ATG *Ex parte* (Jul. 31, 2000) (*ATG July 31, 2000 Ex Parte*); Comptel *Ex parte* (Aug. 8, 2000) (*Comptel August 8, 2000 Ex Parte*); AT&T *Ex parte* (Aug. 23, 2000) (*AT&T August 23, 2000 Ex Parte*).

[18] Letter from Priscilla Hill-Ardoin, Senior Vice President, SBC Telecommunications, Inc. to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (Jul. 13, 2000) (*SBC July 13, 2000 Ex Parte*); *see also* Letter from Marian Dyer, Vice President, SBC Telecommunications, Inc. to Carol Mattey, Deputy Chief, Common Carrier Bureau, FCC (May 25, 2000) (submitting SBC May 24, 2000 "Accessible Letter" describing Broadband Offering). We refer to SBC's Accessible Letter as "*SBC May 24, 2000 Accessible Letter*."

[19] SBC Reply at 4; *see SBC/Ameritech Merger Order* at Appendix C, para. 3(d) (requiring SBC's Advanced Services Affiliate to own all new Advanced Services Equipment after November 8, 1999).

parties have argued – without providing any evidence – that SBC's plans for Project Pronto represents unlawful and anticompetitive behavior on the part of SBC.[20] These parties further argue that granting SBC's request to modify the ownership restrictions in the *Merger Conditions* would result in an unlawful attempt to stifle competition and innovation.[21] We disagree. Merely owning and operating equipment used to provide advanced services does not, by itself, evidence a violation of the Act or our rules. In fact, the *Merger Conditions* themselves contemplate ownership of such equipment by SBC's incumbent LECs under certain circumstances, so long as they make it available to all parties on nondiscriminatory rates, terms, and conditions.[22]

8. The modification contained in this Order is subject to the compliance oversight and enforcement processes under the *Merger Conditions*. All commitments that we rely upon in this decision become enforceable obligations under the *Merger Conditions*. We are confident that our oversight process will provide reasonable assurances that SBC's commitments are fully implemented to the benefit of consumers and that any misconduct is readily detected.[23] We would expect to take swift action in the event our oversight uncovered evidence of violations of this Order. Such action could include revocation of the modification contained herein.

9. Nothing in this Order supersedes SBC's obligations to comply with all applicable Commission orders and rules, now and in the future.[24] We stress again that this Order is confined only to the *Merger Conditions*, and so does not constitute any finding or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband Offering. We recognize that changes in network design and technological developments may have broad implications on competition in the telecommunications industry. We are examining issues relating to competitive access to remote terminals in a general rulemaking proceeding.[25] Although that rulemaking will not alter our determination here to permit SBC's incumbent LECs to own the plug-in cards and associated OCDs, SBC will be bound by any rules ultimately developed in that proceeding that affect the way in which SBC's incumbent LECs provide access to remote terminals.

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[20] *See, e.g.*, AT&T Comments at 9-18 (arguing that SBC's plan is an "unlawful restriction" on the use of its network); DATA Comments at 13-23; ALTS Comments at 5-7, 14-15; Prism Comments at 3, 6-8 (arguing that SBC's proposal will "thwart innovation"); Mpower Comments at 1-4; Comptel *Ex parte* at 1-5 (Jun. 8, 2000) (*Comptel June 8, 2000 Ex Parte*); Mpower *Ex parte* at 5 (Mar. 17, 2000) (*Mpower March 17, 2000 Ex Parte*); Prism *Ex parte* at 4 (Jun. 30, 2000) (*Prism June 30, 2000 Ex Parte*); *but see* USTA Reply at 1-10; Bell Atlantic/GTE Joint Comments at 1-3.

[21] *See, e.g.*, DATA Comments at 13-14; AT&T Reply at 3-4.

[22] *SBC/Ameritech Merger Order* at paras. 3(d), 3(e) (stating that SBC's incumbent LECs are not required to transfer all Advanced Services Equipment to their separate affiliate), 4(n)(5) (allowing SBC's incumbent LECs to continue to own and operate Advanced Services Equipment deployed prior November 8, 1999 so long as they make such equipment available to all parties on nondiscriminatory rates, terms, and conditions).

[23] *ALTS July 23, 2000 Ex Parte* at 2 (asserting that SBC's commitments must be construed as enforceable obligations).

[24] *SBC/Ameritech Merger Order* at para. 356 (emphasizing that the *Merger Conditions* do not override the Commission action in other proceedings); *see id.* at Appendix C, n.2 (noting that "nothing in [the] Conditions shall relieve SBC/Ameritech from the requirements of [the] Act"); *see also ATG July 31, 2000 Ex Parte* at 1-2; *ALTS July 23, 2000 Ex Parte* at 1-4.

[25] *See Collocation Further Notice* at paras. 81-83, 103-12, 119-28.

Nothing we do in this Order is intended to prejudge in any way the outcome of that rulemaking.[26]

10. SBC seeks to own and operate the plug-in ADLU Card and the OCD as part of its incumbent LECs. To do this, we must find that the equipment is not "Advanced Services Equipment" under the *Merger Conditions* or grant a waiver or modification of the condition that requires SBC's Advanced Services Affiliate to own and operate all Advanced Services Equipment deployed after November 8, 1999. For the reasons explained below, although we find that both the ADLU Card and the OCD are Advanced Services Equipment for the purposes of the *Merger Conditions*, we conclude that the public interest is served by allowing SBC's incumbent LECs to own, install, and operate the ADLU Cards in their remote terminals and the associated OCDs in their central offices, subject to the terms and conditions set forth in this Order. We stress, however, that SBC remains free under the *Merger Conditions* to deploy plug-in cards and OCDs through its unregulated separate Advanced Services Affiliate without the need for any Commission approval or action.

A. Classification of Equipment

11. The *SBC/Ameritech Merger Order* requires SBC's Advanced Services Affiliate to own, deploy, and operate all new Advanced Services Equipment, such as Digital Subscriber Line Access Multiplexers (DSLAMs) and packet switches,[27] after November 8, 1999.[28] The *Merger Conditions* allow SBC's incumbent LECs to continue to own and operate Advanced Services Equipment purchased and installed prior to that date, so long as SBC's incumbent LECs permit unaffiliated telecommunications carriers to use the equipment under the same rates, terms, and conditions provided to SBC's Advanced Services Affiliate.[29] The first issue to consider is whether the equipment at issue should be classified as Advanced Services Equipment under the *Merger Conditions*.

12. *ADSL Digital Line Unit Card (ADLU Card).* We look first to the language of the *Merger Conditions* to determine whether plug-in cards – specifically, SBC's plug-in ADLU Card – should be classified for the purposes of the *Merger Conditions* as Advanced Services Equipment. The

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[26] *See SBC/Ameritech Merger Order* at Appendix C, n.2.

[27] DSLAMs split voice (low band) and data (high band) signals carried over a copper twisted pair, and combine several functions: (1) the ability to terminate copper customer loops; (2) the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; (3) the ability to extract data units from the data channels on the loops; and (4) the ability to combine data units from multiple loops onto one or more trunks that connect to a packet switch or packet switches. A packet switch is equipment that routes individual data units, or "packets," based on address or other routing information contained in the packets. *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, paras. 303-04 (1999) (*Local Competition Third Report and Order*).

[28] Specifically, the Advanced Services Affiliate must "own . . . and operate all new Advanced Service Equipment . . . used to provide Advanced Service (including equipment used to expand the capability or capacity of existing Advanced Services Equipment) put into service by SBC/Ameritech later than 30 days after the Merger Closing Date." *SBC/Ameritech Merger Order* at Appendix C, para. 3(d); *see also Non-Accounting Safeguards Order* at paras. 159-61 (prohibiting joint ownership of certain assets).

[29] *Id.* at Appendix C, para. 4(n)(5). The *Merger Conditions* provide a limited grace period for SBC's incumbent LECs to transfer Advanced Services Equipment to its affiliate, but such transfer is not required. *See id.* at Appendix C, para. 3(e).

Merger Conditions define Advanced Services Equipment as:

> (1) DSLAMs or functionally equivalent equipment; (2) spectrum splitters that are used solely in the provision of Advanced Services; (3) packet switches and multiplexers such as ATMs and Frame Relay engines used to provide Advanced Services; (4) modems used in the provision of packetized data; and (5) DACS frames used only in the provision of Advanced Services. Spectrum splitters (or the equivalent functionality) used to separate the voice grade channel from the Advanced Services channel shall not be considered Advanced Services Equipment.[30]

The *Merger Conditions* do not precisely list plug-in cards like the ADLU Card as Advanced Services Equipment. We therefore must determine whether the plug-in ADLU Card is "functionally equivalent" to a DSLAM. In doing so, we look to the features, functions, and capabilities of the plug-in card. Moreover, because the *Merger Conditions* do not specify the plug-in card's classification, we must also consider the underlying intent of the separate affiliate *Merger Condition* in determining the classification of the plug-in ADLU Card.

13. We adopted this condition to "ensure that competing providers of advanced services receive effective, nondiscriminatory access to facilities and services of the merged firm's incumbent LECs that are necessary to provide advanced services."[31] In particular, a separate affiliate must use "the same processes as competitors and pay an equivalent price for facilities and services," thereby creating "a level playing field."[32] These factors led us to conclude that SBC's "provision of advanced services through a separate affiliate will spur the deployment of advanced services by *all* entities."[33] With this backdrop, we must consider whether that goal would be achieved if SBC's incumbent LECs were to own and operate this multi-functional ADLU Card plugged into its NGDLC systems.

14. We conclude that plug-in cards containing advanced services capability should be classified as Advanced Services Equipment for the purposes of the *Merger Conditions*. The plug-in ADLU Card is used to provide advanced services to consumers. As SBC itself notes, the ADLU Card plugged into an NGDLC system provides functionality similar to a DSLAM, although the plug-in card also contains voice capabilities and the spectrum splitter functionality.[34] We note that almost all

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[30] *Id.* at Appendix C, para. 3(d). In addition, DACS frames used for voice services are not considered advanced services equipment under the *Merger Conditions*. By "DACS," we mean "Digital Access Cross-connect System," which is a specific brand of digital cross-connect system manufactured by Lucent. Other vendors manufacture similar digital cross-connect systems.

[31] *SBC/Ameritech Merger Order* at para. 363; *see id.* at para. 197 (listing some inputs competing carriers need to provide advanced services); *Northpoint May 11, 2000 Ex Parte* at 1; *Rhythms July 28, 2000 Ex Parte* at 1.

[32] *SBC/Ameritech Merger Order* at para. 363.

[33] *Id.* at para. 444 (emphasis added).

[34] Specifically, SBC states that: "[t]he ADLU card is an ADSL service card, providing the same specifications as current ADSL service. *This card provides a functionality similar to a DSLAM* in that it splits the voice and data signal and generates an ATM packet signal for the data path." SBC Reply at Appendix DLE-DSL, § 2.5 (emphasis added); *see also* SBC *Ex parte* at 3, 4, 5 (Mar. 8, 2000) (*SBC March 8, 2000 Ex Parte*) (submitting transcript of technical conference held in early March 2000 to examine operational and other issues involved with its Project Pronto architecture); SBC Communications Inc., *Project Pronto Product Overview* at 7, 9, 14 (Mar. 1, 2000) (contained in the appendix to ALTS Comments); *see SBC June 2, 2000 Ex Parte* at 3 (stating that determination should be based on, among other things, a finding that the equipment is functionally equivalent to a (continued....)

commenters contend that the plug-in card performs the functions of a DSLAM when plugged into an NGDLC system.[35] The manufacturer's description of the equipment states that the plug-in cards integrate ADSL and Asynchronous Transfer Mode (ATM) capabilities into the NGDLC systems.[36] Indeed, the plug-in ADLU Card is an indispensable component for providing ADSL service through the manufacturer's NGDLC system; without the plug-in ADLU Card in the NGDLC system, a carrier would have to collocate other equipment (e.g., a DSLAM) in the remote terminal to provide DSL service to consumers served by such remote terminals.[37] Other manufacturers of competing plug-in cards describe their cards as creating a DSLAM within a remote terminal.[38] We conclude that plug-in cards provide carriers with DSLAM functionality, so that the plug-in cards become "functionally equivalent" to a DSLAM.

15. We are not persuaded by SBC's argument that the spectrum splitter functionality in the ADLU Card mandates a finding that it is voice equipment, and therefore excluded from the ownership restrictions in the *Merger Conditions*.[39] We recognize that the *Merger Conditions* provide that "splitters (or equivalent functionality) used to separate the voice grade channel from the Advanced Services channel shall not be considered Advanced Services Equipment."[40] However, splitter functionality is not the sole determinant of the plug-in card's classification. As we noted in the *Local Competition Third Report and Order*, DSLAMs often perform a spectrum splitting function in addition to their primary

(Continued from previous page)
DSLAM). In its description of the NGDLC system, Alcatel states that providing DSL service through Alcatel NGDLC systems requires special software and two types of plug-in cards, i.e., ADLU Cards and ADSL Bank Control Unit (ABCU) Cards. ABCU Cards, which Alcatel explains contain certain multiplexing and intelligence capabilities, are plugged into a channel bank assembly alongside the ADLU Cards. *See* Alcatel USA, Inc., Q&A: LITESPAN-ADSL (1998) (contained in *Alcatel May 4, 2000 Ex Parte*).

[35] AT&T Comments at 6 (stating that the ADLU Card "is simply a plug-in card, residing within the DLC, that provides DSLAM functionality"); MCIW Comments at 1, 3-4; Prism Comments at 2; Comptel Reply at 3; Comptel *Ex parte* at 1 (Apr. 26, 2000); Jato *Ex Parte* at 4-5 (May, 23, 2000) (*Jato May 23, 2000 Ex Parte*); Prism *Ex parte* at 2 (Jun. 30, 2000) *(Prism June 30, 2000 Ex Parte)*; DATA *Ex parte* at 2-4 (Apr. 11, 2000) (*DATA April 11, 2000 Ex Parte*).

[36] Alcatel USA, Inc., LITESPAN INTEGRATED ASYMMETRICAL DIGITAL SUBSCRIBER LINE (date unknown) (*Alcatel Litespan ADSL Product Literature*) (contained in *Alcatel May 4, 2000 Ex Parte*); *see also* Alcatel USA, Inc., Q&A: LITESPAN-ADSL (1998) (contained in *Alcatel May 4, 2000 Ex Parte*).

[37] SBC has chosen to use the Litespan NGDLC system manufactured by Alcatel USA, Inc. and the UMC-1000 NGDLC system manufactured by Advanced Fiber Communications. In both manufacturers' NGDLC systems, plug-in cards are inserted into channel bank assemblies in order to provide advanced services to consumers. *See Alcatel May 4, 2000 Ex Parte*. Through these additional plug-in cards, an NGDLC system "provides DSL services from both the central office and remote terminals." Alcatel USA, Inc., THE NEW WORLD ACCESS NETWORK AND THE ROLE OF THE NEW WORLD DIGITAL LOOP CARRIER 6 (1999) (*Alcatel NGDLC White Paper*) (contained in *Alcatel May 4, 2000 Ex Parte*).

[38] *See* Lucent Technologies, Inc., ASYMMETRIC DIGITAL SUBSCRIBER LINE FOR THE SLC-2000 ACCESS SYSTEM AND SLC SERIES 5 CARRIER SYSTEM 3 (1998).

[39] *SBC June 2, 2000 Ex Parte* at 2.

[40] *SBC/Ameritech Merger Order* at Appendix C, para. 3(d).

multiplexing functionality.[41] As acknowledged by SBC, the plug-in ADLU Card provides functionality similar to a DSLAM. We recognize that such plug-in cards may possess other capabilities, just as DSLAMs may possess splitting functionality.[42] The fact that this particular equipment has multiple functions does not resolve the question of whether it should be classified as Advanced Services for the purposes of the *Merger Conditions*.[43]

16. We also look to the underlying intent of the separate affiliate condition to resolve this question. If SBC's incumbent LECs were to own this equipment free of any competitive safeguards, it could undermine one of the primary benefits of the separate affiliate condition – that SBC's separate affiliate must go through the same processes as competitors to collocate equipment used to provide advanced services.[44] Under the *Merger Conditions*, to the extent customers are served by remote terminals, SBC could not provide its Advanced Services Affiliate with access to these remote terminals without also providing equivalent access to unaffiliated carriers. As a consequence, this condition creates a powerful incentive for SBC to solve the problems of limited space in remote terminals, as well as other technical issues related to competitive access to remote terminals.[45] Allowing SBC's incumbent LECs to own and operate the ADLU Cards would eliminate any need for SBC's Advanced Services Affiliate to collocate in either remote terminals or central offices, and thereby eliminate SBC's incentive to improve its collocation processes. In light of the foregoing, we find that the plug-in ADLU Card is properly classified as Advanced Services Equipment under the *Merger Conditions*, so that SBC's incumbent LECs are not permitted to own and operate the ADLU Cards after November 8, 1999.[46]

17. We emphasize that the modification contained herein is limited only to plug-in cards installed in remote terminals. Although from a technical standpoint the plug-in card can be deployed in central office-based applications, this Order does not allow SBC's incumbent LECs to pursue that approach.[47] Accepting SBC's argument that the plug-in card is voice equipment would provide SBC's

[41] *Local Competition Third Report and Order* at para. 303 (noting that "DSLAM equipment sometimes includes a splitter"); *see Line Sharing Order* at para. 9, n.11; *see also* Walter Goralski, ADSL AND DSL TECHNOLOGIES 252 (1998) (noting that DSLAMs often contain splitter functionality).

[42] *Prism June 30, 2000 Ex Parte* at 2, n.5; *DATA April 11, 2000 Ex Parte* at 2-3.

[43] We leave open the issue of whether deployment of such multi-functional equipment by the separate affiliate would make that affiliate a successor or assign of SBC's incumbent LECs.

[44] *SBC/Ameritech Merger Order* at para. 363; *see id.* at para. 197, n. 357 (noting that competitive LECs require access to an incumbent's remote terminals); *see also* SBC *Ex parte* at 2 (Mar. 22, 2000) (stating that SBC's Advanced Services Affiliate would no longer need to request collocation at remote terminals) (*SBC March 22, 2000 Ex Parte*); Comptel *Ex parte* at 1 (May 18, 2000) (*Comptel May 18, 2000 Ex Parte*); Northpoint *Ex parte* at 1 (May 11, 2000) (*Northpoint May 11, 2000 Ex Parte*); *Prism June 30, 2000 Ex Parte* at 3.

[45] *See Comptel May 18, 2000 Ex Parte* at 1. We note that, in addition to the problem of limited space, competitors seeking to collocate in a remote terminal site may have to address other issues, such as technical interoperability of equipment, heat dissipation, power supply, and physical connectivity to the incumbent LEC's network. We note that we are seeking comment on these and other issues in another proceeding. *See Collocation Further Notice* at para. 104.

[46] We emphasize that our decision here does not prejudge the regulatory classification of plug-in ADLU Cards or similar multi-functional equipment in any other context.

[47] *See* Alcatel USA, Inc., Q & A: LITESPAN-ADSL 1 (1998) (stating that the Litespan equipment is "designed for deployment in central office and remote digital terminals") (contained in *Alcatel May 1 Ex Parte*).

incumbent LECs the freedom to deploy plug-in cards (and the associated advanced services capability) throughout their networks. This course of action would substantially undermine the collocation benefit of the separate affiliate condition.[48] We therefore stress that the modification contained in this Order applies only to plug-in ADLU Cards installed in remote terminals and the associated OCDs used to support such cards.

18. *Optical Concentration Device (OCD).* We likewise find that the OCD described by SBC should be classified as Advanced Services Equipment under the *Merger Conditions*.[49] As SBC itself notes, the OCD is an Asynchronous Transfer Mode (ATM) switch that performs a critical routing function in providing advanced services to consumers served by the ADLU Card contained in NGDLC systems.[50] The specific type of OCD that SBC plans to use is described by the manufacturer as an "ATM switch."[51] As such, the OCD falls squarely within the definition in the *Merger Conditions*. Specifically, the *Merger Conditions* state that "packet switches . . . such as ATMs . . . used to provide [a]dvanced [s]ervices" are Advanced Services Equipment.[52] As SBC states in its request, its incumbent LECs plan to use the OCD in conjunction with the plug-in cards to provide advanced services.[53]

19. We are not persuaded by SBC's and AT&T's argument that the OCD should not be classified as Advanced Services Equipment under the *Merger Conditions* because it does not provide advanced services directly to end-user consumers.[54] The definition of Advanced Services Equipment in the *Merger Conditions* makes no distinction between the equipment used to provide advanced services on a wholesale versus a retail basis. For these reasons, we conclude that, absent a waiver or modification, SBC's incumbent LECs are not permitted to own, deploy, and operate the OCDs under the *Merger Conditions* after November 8, 1999.

20. We emphasize again that our decision here is governed solely by the terms and purposes of the Merger Order. As noted above, SBC has committed to providing all carriers nondiscriminatory access to its Broadband Offering and to making available all technically feasible features, functions, and capabilities. In light of these commitments, we need not, and therefore, do not reach the broader question of whether this equipment (i.e., the plug-in card and the OCD) can be properly classified as

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[48] *See SBC/Ameritech Merger Order* at para. 363.

[49] Again, we emphasize that our decision here in no way prejudges the regulatory classification of an OCD in any other context.

[50] *SBC Request* at 5; SBC Reply at Appendix DLE-DSL, § 2.6 (describing the ATM routing functions of the OCD); *see SBC/Ameritech Merger Order* at Appendix C, para. 3(d) (stating that Advanced Services Equipment includes "packet switches . . . used to provide Advanced Services"); *see DATA April 11, 2000 Ex Parte* at 3-4; *Jato May 23, 2000 Ex Parte* at 5.

[51] SBC *Ex parte* at 2 (Mar. 1, 2000) (providing technical description of OCD manufactured by Lucent). In its literature, Lucent describes the OCD as follows: "The CBX 500 Multiservice ATM switch delivers on the vision of ATM with the Frame Relay and IP service capabilities required to build the New Public Network."

[52] *SBC/Ameritech Merger Order* at Appendix C, para. 3(d).

[53] *SBC Request* at 1, 5.

[54] *See* SBC Reply at 7-8.

network elements subject to the unbundling requirements of section 251(c)(3).[55] In addition, we stress that our classification of the plug-in card and OCD as Advanced Services Equipment for the purposes of the *Merger Conditions* does not constitute an interpretation of what is "advanced telecommunications capability" under section 706 of the 1996 Act.

B. Modification of the Ownership Restrictions

21. Because SBC's proposal provides for its incumbent LECs to own Advanced Services Equipment in contravention of the *SBC/Ameritech Merger Order*, we will consider whether we should modify the *Merger Conditions* in order to allow SBC to proceed as it proposes.[56] In evaluating SBC's request, we consider whether changing the *Merger Conditions* serves the public interest. Our fundamental goal in adopting this condition was to ensure that competing carriers receive effective, nondiscriminatory access to the facilities and services of SBC's incumbent LECs that are necessary to provide advanced services.[57] For that reason, any change in the *Merger Conditions* must be tailored in a way that affirmatively and identifiably promotes the underlying purpose of the condition.[58]

22. In its initial requests and subsequent submissions, SBC contends that operational and administrative obstacles, particularly the lack of space in remote terminals and the lack of interoperable Advanced Services Equipment, prevent its incumbent LECs from serving the needs of its Advanced Services Affiliate in a manner that complies fully with the *SBC/Ameritech Merger Order*.[59] Under the

[55] *See Collocation Further Notice* at paras. 118-28; *see also Local Competition Third Report and Order* at para. 312 (noting that carriers remain free to demonstrate to state commissions that lack of unbundled access to network elements impairs their ability to offer service).

[56] ALTS Comments at 2; *DATA April 11, 2000 Ex Parte* at 1-5; *Comptel May 18, 2000 Ex Parte* at 2; *Jato May 23, 2000 Ex Parte* at 4-5; *see SBC Request* at 6; SBC Reply at 5 (arguing that the Commisson can modify the conditions); MCIW Comments at 2 (citing 47 U.S.C. § 416(b), 47 C.F.R. § 1.3); DATA Reply at 5; SBC Ex parte (Mar. 3, 2000) (SBC March 3, 2000 Ex Parte) (citing Application of GTE Corporation and Southern Pacific Company for Consent to Transfer Control of Southern Pacific Communications Company and Southern Pacific Satellite Company, *Memorandum Opinion and Order*, FCC 84-254 (rel. June 4, 1984)); *see also SBC/Ameritech Merger Order* at para. 415 (noting the Commission's authority to modify the *Merger Conditions*).

[57] *See SBC/Ameritech Merger Order* at para. 363; *see also id.* at para. 197 (listing some facilities and services need by competitive LECs to provide advanced services); DATA Reply at 4-5.

[58] *See* MCIW Comments at 2 (arguing that a waiver or modification of the *Merger Conditions* must further the public interest); ALTS Comments at 10 (arguing that a waiver should further telecommunications competition); *DATA May 19, 2000 Ex Parte* at 1-2.

[59] *SBC Request* at 2-3, 5-6; SBC Reply at 8. SBC states that space limitations restrict the amount of equipment that can be installed in remote terminal sites (i.e., controlled environmental vaults, huts, and cabinets). In addition, SBC's choice of equipment – NGDLC systems containing plug-in cards – is usually deployed as an integrated system installed in a cabinet. Under Project Pronto, SBC's Advanced Services Affiliate plans to use only the plug-in cards installed in NGDLC systems, while SBC's incumbent LECs plan to use the other parts of the NGDLC systems to continue providing voice service. Under such a scenario, the nondiscrimination safeguards incorporated into the *Merger Conditions* would require SBC's incumbent LECs to allow unaffiliated carriers to install similar plug-in cards in their NGDLC systems. SBC claims that the administrative and operational expenses involved with such a scenario would add costs and substantial delays to its plans to deploy advanced services. *SBC Request* at 2-3. SBC also states that technical issues would also add substantial delays. In particular, SBC claims that plug-in cards from one manufacturer are not compatible with the NGDLC system of another manufacturer.

nondiscrimination safeguards adopted in the *Merger Conditions*, to the extent SBC's incumbent LECs allow its Advanced Services Affiliate to deploy and collocate special equipment in remote terminals and elsewhere, the incumbent LECs must offer the same opportunity to unaffiliated carriers on nondiscriminatory rates, terms, and conditions.[60] SBC argues that the time and resources required to accommodate requests from multiple carriers to insert their own plug-in cards will substantially delay its efforts to deploy advanced services to the mass market.[61] In response, parties either generally oppose any modifications or waiver of the *Merger Conditions*, or contend that the Commission should deny SBC's request to deploy this Advanced Services Equipment through its incumbent LECs unless SBC can demonstrate that its proposal contains safeguards sufficient to protect competitors from abuse.[62]

23. For the reasons explained below, we find that SBC has demonstrated that the public interest is served by modifying the *Merger Conditions* to allow SBC's incumbent LECs to own and operate ADLU Cards in their remote terminals and the associated OCDs. The issues presented are complex and novel. We conclude that, as modified by SBC in response to issues raised by commenters, SBC's proposal serves the public interest. While SBC's proposal may not be as effective as the separate affiliate condition in ensuring that competing providers of advanced services have nondiscriminatory access to those inputs of the incumbent needed for advanced services, the immediate deployment of advanced services to consumers in SBC's regions that will occur as a result of SBC's proposal provides a significant benefit that we believe must be considered in our public interest analysis. In particular, we find that SBC's proposal should affirmatively and identifiably promote the rapid deployment of advanced services in a pro-competitive manner, thereby serving the goals of section 706. Granting SBC permission will speed the deployment of ADSL service availability to 77 million consumers within three years.[63] In particular, SBC's Project Pronto will eliminate the distance limitations that prevent many consumers from obtaining DSL services today, and allow consumers served by remote terminals to receive DSL service where they otherwise would not.[64] Millions of consumers that presently do not have access to advanced services thus will benefit from advanced services capabilities throughout SBC's service territory.[65] Granting SBC's request to allow its incumbent LECs to own this equipment will allow SBC's Advanced Services Affiliate (and other carriers) to begin offering service to these

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[60] *SBC/Ameritech Merger Order* at Appendix C, para. 3 (requiring SBC's incumbent LECs to comply with the nondiscrimination safeguards of 47 U.S.C. § 272(c)).

[61] *SBC Request* at 6.

[62] *Comptel May 18, 2000 Ex Parte* at 1-5; MCIW Comments at 6; *DATA April 11, 2000 Ex Parte* at 1-5; *DATA May 19, 2000 Ex Parte* at 1-2; *Rhythms July 28, 2000 Ex Parte* at 1-3.

[63] *See SBC June 2, 2000 Ex Parte* at 5.

[64] Distance and length of the copper loop poses a barrier to providing DSL service. Similar disruptions can be caused by bridged taps, loading coils, and DLC systems. *See Line Sharing Order* at para. 8, n.9.

[65] SBC estimates that approximately 20 million consumers are unable to receive any DSL service today because of distance limitations or the use of existing DLC systems. *See SBC July 13, 2000 Ex Parte* at 1. Today, approximately 25% of SBC's customers lines are served by DLC systems, which some parties argue pose technical and operational barriers to the provision of advanced services to those consumers. *See* Competitive Access to Next Generation Remote Terminals, *Public Forum*, Transcript at 12-13 (May 11, 2000) (transcript available at <http://www.fcc.gov/realaudio/publicforums.html>) (*Competitive Access to Next Generation Remote Terminals Public Forum Transcript*); *Northpoint May 11, 2000 Ex Parte* at 1. SBC's proposal ensures these consumers have choices that were previously unavailable to them.

consumers sooner than otherwise would be the case.[66] In addition, SBC's proposal enables competing carriers to effectively resell SBC's ADSL service, and thereby provides these CLECs with an immediate opportunity to compete against SBC in the mass market.[67] SBC's commitments call for its incumbent LECs to make available their Broadband Offering shortly after receiving our approval, which means that competitive LECs will soon be able to use the Broadband Offering (instead of collocating a DSLAM) to reach consumers served by remote terminals. Moreover, SBC's proposal provides a process for competitive LECs to obtain the full features, functions, and capabilities of the equipment, which will enable them to compete more effectively against SBC by differentiating their product offerings. For these reasons, we conclude that SBC's current proposal should provide consumers a greater choice of both services and providers in the near term.

24. At the same time, we agree with ALTS, Comptel, and others that granting SBC's incumbent LECs the ability to own and operate the Advanced Services Affiliate's equipment, without any associated safeguards, could eliminate substantial benefits derived from the separate affiliate model.[68] Most significantly, the public loses the benefit of improved systems and processes that accrue to all providers of advanced services because SBC's Advanced Services Affiliate would no longer buy the same inputs used to provide advanced services as facilities-based carriers (e.g., stand-alone xDSL-capable loops). Under SBC's proposal, SBC's Advanced Services Affiliate would effectively become a reseller of SBC's Broadband Offering. SBC's Advanced Services Affiliate will no longer be seeking collocation in remote terminals on the same terms (or same scale) as it otherwise would have because it will have no need to collocate equipment in remote terminals.[69] As a result, competing carriers would effectively lose the right to obtain similar collocation arrangements on nondiscriminatory rates, terms, and conditions.[70] In addition, unaffiliated carriers lose the benefit of obtaining low-cost Operations Installation and Maintenance (OI&M) services for their own purposes because SBC's Advanced Services Affiliate has no need to obtain OI&M services from the SBC incumbent LECs for equipment installed at remote terminals. There is an increased risk that the separate affiliate condition will not be as effective at detecting potential discriminatory conduct because SBC's Advanced Services Affiliate may not buy

[66] *SBC July 13, 2000 Ex Parte* at 1.

[67] SBC Reply at 13. In its proposal, SBC commits to making available the Broadband Offering to its Advanced Services Affiliate and unaffiliated carriers on the same date, so that its separate affiliate will not enjoy an unfair advantage over other carriers in using the new offering. In addition, SBC commits to making its Combined Voice and Data Offering available to competitive LECs within 90 days from the adoption of this Order. *See SBC August 2, 2000 Ex Parte* at 5 (noting in Proposed Modification Commitment 3 that SBC's incumbent LECs will provide the Combined Voice and Data Offering within 90 day deadline).

[68] ALTS Comments at 11; MCIW Comments at 4-5; *Comptel May 18, 2000 Ex Parte* at 1-5; *DATA May 31, 2000 Ex Parte* at 1-2; *Jato July 24, 2000 Ex Parte* at 1-5; Comptel *Ex parte* at 7-8 (Aug. 8, 2000) (*Comptel August 8, 2000 Ex Parte*).

[69] In the *SBC/Ameritech Merger Order*, we stated that "an advanced services separate affiliate will provide a structural mechanism to ensure competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services of the merged firm's incumbent LECs that are necessary to provide advanced services." *Id.* at para. 363. Under SBC's proposal, however, its Advanced Services Affiliate would not seek to collocate its ADLU Cards in the remote terminals or its OCDs in the incumbent LECs' central offices. *See SBC March 22, 2000 Ex Parte* at 2.

[70] *SBC/Ameritech Merger Order* at n.674 (noting that the Advanced Services Affiliate "will wait in line for collocation, petition to open closed offices, and otherwise deal with the same collocation and OSS implementation problems experienced by competitive LECs.").

the same inputs as other carriers.[71] The public thus may lose the ability to benchmark the quality that facilities-based competitors receive against the quality SBC's incumbent LECs provide to their Advanced Services Affiliate.

25. In response to concerns raised by commenters, SBC modified its proposal to address five broad competitive issues: (1) access to the Broadband Offering; (2) access to the remote terminals and central offices of SBC's incumbent LECs; (3) access to the existing copper plant of SBC's incumbent LECs; (4) access to the features, functions, and capabilities of the combination of network elements used to provide SBC's Broadband Offering (e.g., the OCD and the plug-in card); and (5) access to a combined voice and data offering.[72] SBC states that its incumbent LECs will price their Broadband Offerings "in each state in accordance with the pricing methodology then applicable to unbundled network elements under Sections 251(c)(3) and 252(d)(1) of the Communications Act."[73] In response to concerns raised by ALTS and others, SBC states that it does not object to resolving pricing disputes through state arbitration proceedings conducted in accordance with section 252.[74] SBC commits to provide all carriers with nondiscriminatory access to the arrangement.[75] To assist the Commission and the public in evaluating the performance of SBC's incumbent LECs, SBC proposes to disaggregate the performance measurements contained in the Carrier-to-Carrier Performance Plan.[76] SBC further emphasizes that its

[71] *See SBC March 22, 2000 Ex Parte* at 2 (noting that, under its proposal, the separate affiliate will have no need to collocate in remote terminals or order certain inputs used by unaffiliated carriers); *SBC/Ameritech Merger Order* at para. 209 (noting that the increased ability to discriminate arises, in part, from difficulty in monitoring an incumbent LEC's performance).

[72] *See ATG May 19, 2000 Ex Parte* at 1-3. SBC's integrated voice and data offering is a response to concerns raised by commenters that the increased use of NGDLC systems may inhibit their ability to provide both voice and data service to consumers. To address these concerns, SBC commits to offering a Combined Voice and Data Offering, which is combination of network elements consisting of its Broadband Offering and an unbundled local loop. *See SBC July 13, 2000 Ex Parte* at 5.

[73] *SBC August 2, 2000 Ex Parte* at 4-5.

[74] SBC *Ex parte* at 1 (Aug. 8, 2000) (*SBC August 8, 2000 Ex Parte*).

[75] Consistent with the statutory scheme provided in the Telecommunications Act of 1996, we expect that state commissions will maintain their usual oversight of the offerings made available by SBC's incumbent LECs. We note that the Texas Commission has already started hosting collaborative sessions to explore the operational and technical issues surrounding SBC's proposal. *See* Comptel *Ex parte* (Jun. 8, 2000) (submitting transcript of workshop hosted by the Texas Commission on June 5, 2000). Other state commissions are addressing issues related to the impact of remote terminals (and DLC systems) on the competitive deployment of advanced services and local telephony. *See, e.g.*, Petition of Covad Communications Company for an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc. Implementing the Line Sharing Unbundled Network Element, Docket No. A-310696F0002, *Recommended Decision of Administrative Law Judge* at 40-41 (PA Pub. Util. Comm. Jun. 28, 2000) (recommending that state commission require incumbent LEC to offer collocation of line cards in DLC systems); Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues, 00-0312/00-0313, *Arbitration Decision* at 32 (IL Com. Comm. Aug. 17, 2000) (requiring incumbent LEC to install plug-in cards capable of supporting all types of DSL service upon request).

[76] *SBC July 13, 2000 Ex Parte* at 10; SBC *Ex parte* (May 30, 2000) (submitting plan for modifying its performance measurements to account for its Broadband Offering).

new network architecture will not remove any options previously available to competitive LECs, so that other carriers can continue to use their existing equipment or take advantage of the new offerings made available by SBC.[77] SBC states that unaffiliated carriers will have the potential to distinguish their advanced services product offerings because SBC will allow unaffiliated carriers to use the full features, functions, and capabilities of the equipment.

26. We note that SBC's proposal still requires its Advanced Services Affiliate to operate like an unaffiliated carrier to provide advanced services. SBC's Advanced Services Affiliate must own and seek to collocate packet switches, DSLAMs, and other equipment used to provide advanced services to consumers served directly from central offices.[78] The separate affiliate must also continue to order all interconnection facilities required to provide advanced services.[79] SBC's Advanced Services Affiliate will also assess its own operational needs and perform its own network planning, such as deciding which markets to enter and where to build out its advanced services network.

27. In light of these considerations, we conclude that SBC's modified proposal, viewed in its entirety, is an adequate way at this time to meet the underlying goals of the separate affiliate condition adopted in the *SBC/Ameritech Merger Order*. As such, this proposal, including the commitments that are express conditions of our grant of the modification, maintains the public interest balance struck in the original *SBC/Ameritech Merger Order*. We emphasize that the modification approved in this Order applies only to the plug-in cards installed in NGDLC systems at remote terminal sites and the necessary central office OCDs supporting such cards. To the extent SBC seeks to install different equipment (e.g., DSLAMs or mini-DSLAMs) used to provide advanced services through remote terminals, the *Merger Conditions* still require SBC's Advanced Services Affiliate to own such equipment and to follow the standard processes for collocating such equipment in remote terminals.

28. We disagree with Rhythms that outright denial is in the public interest.[80] As noted above, granting SBC permission should speed the deployment of advanced services to consumers throughout SBC's territory, some 20 million of whom are unable to receive any DSL service today. Our approval of SBC's request subject to its pro-competitive commitments not only should enable 20 million consumers to have access for the first time to exciting new services, but also paves the way for Rhythms and other carriers to compete for those consumers. SBC's commitments will facilitate Rhythms' access to remote terminals and enable Rhythms and others to differentiate their product offerings from those of SBC's Advanced Services Affiliate. Furthermore, we fully expect Rhythms and other carriers will continue to enjoy benefits from the separate affiliate condition, such as improved collocation processes, because SBC's Advanced Services Affiliate will still need to collocate in order to provide service to consumers served directly from central offices.

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[77] *SBC June 2 Ex Parte* at 6; *SBC April 6, 2000 Ex Parte* at 1; SBC Reply at 13. SBC also clarifies that its proposed network architecture will not eliminate other options available to competitive LECs, such as strategies based on adjacent collocation. *See SBC April 6, 2000 Ex Parte* at 1 (addressing alternative operational arrangements raised by MCIW); *see also* MCIW *Ex parte* (Mar. 24, 2000) (proposing alternative arrangements); *ATG July 31, 2000 Ex Parte* at 4 (noting SBC's obligations under the *Local Competition Third Report and Order*).

[78] *See SBC March 22, 2000 Ex Parte* at 2.

[79] *SBC/Ameritech Merger Order* at Appendix C, para. 4(f) (requiring the separate affiliate to order all interconnection facilities and telecommunications services used to provide advanced services).

[80] *Rhythms July 28, 2000 Ex Parte* at 1-3; *see* Mpower *Ex parte* at 1, 6 (Aug. 15, 2000) (*Mpower August 15, 2000 Ex Parte*).

29. Finally, we note that the commitments adopted in this Order are binding only so long as the *Merger Conditions* remain in effect. At the same time, to the extent SBC commits to do things it currently is required to do under the Act and our rules, these obligations remain even after the *Merger Conditions* no longer apply. SBC's new offerings create additional choices for competitive LECs. Nothing about our modification of the ownership restrictions in the *Merger Conditions* limits a competitive LEC's ability to obtain an unbundled local loop or subloop, including loops capable of providing xDSL services. Nor does this decision revise or restrict our existing definition of the local loop or the subloop network elements.[81] Carriers may therefore elect to use SBC's Broadband Offering, its Combined Voice and Data Offering, enhanced offerings based on these combinations, unbundled local loop and subloop network elements, or any other entry strategy permitted under the Act and our rules. Our approval of SBC's request for modification of the commitments contained in the SBC/Ameritech Merger Order is explicitly conditioned on SBC's compliance with its proposal as described in this Order. We describe SBC's proposal in more detail below.

1. Broadband Offering

30. The heart of SBC's original proposal is its Broadband Offering, which is a combination of network elements provided as a wholesale arrangement.[82] SBC explains that its incumbent LECs will offer all carriers (including SBC's Advanced Services Affiliate) an amendment to their interconnection agreements filed with the state commissions to provide access to the Broadband Offering.[83] We take no position on whether SBC's Broadband Offering is subject to sections 251-252 or any other provisions of the Act. Such issues may be raised in state proceedings relating to the proposed amendments to the interconnection agreements.

31. To use the Broadband Offering, carriers (including SBC's Advanced Services Affiliate) will first receive access to the OCD in the central office by submitting an Access Services Request (ASR) and providing additional information. In this way, a carrier will receive access to a "port" on the OCD, which is then used to establish a "permanent virtual connection." Using this access to the OCD, a carrier will be able to connect thousands of consumers served by plug-in cards installed in NGDLC systems (in this case, the ADLU Cards) to its advanced services network.[84] Carriers will then order two elements to connect individual consumers to their broadband network: (1) the subloop element between the central office and the remote terminal (i.e., the fiber feeder portion of the local loop); and (2) the

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[81] *See* ATG *Ex Parte* 3-4 (Jul. 24, 2000) (*ATG July 24, 2000 Ex Parte*).

[82] *See SBC April 6, 2000 Ex Parte* at 4-5. To facilitate access to the Broadband Offering, SBC developed a new provisioning system known as "SOLID." The SOLID system is used to provision components of both the plug-in cards and the associated OCDs. Before providing DSL service using the Broadband Offering, carriers must program certain capabilities into the plug-in card using the SOLID system. SBC refers to this process as building a "profile." *See SBC April 4, 2000 Ex Parte* at 5-6. A carrier's profile consists of several factors, including upstream speed (i.e., bandwidth for transmissions towards the central office), downstream speed (i.e., bandwidth for transmissions towards the customer premises), aggregate power, and noise. *See SBC May 24, 2000 Accessible Letter* at 11 (contained in *SBC May 25, 2000 Ex Parte*). By using the SOLID system in this way, SBC's Advanced Services Affiliate and other carriers can differentiate their product offerings. SOLID is also intended to be used to provision the integrated voice and data offering discussed below.

[83] *SBC May 24, Accessible Letter* at 4 (contained in *SBC May 25, 2000 Ex Parte*); SBC Reply at Appendix DLE-DSL.

[84] *See* SBC *Ex parte* at 2-3 (Apr. 6, 2000) (*SBC April 6, 2000 Ex Parte*).

subloop element between the remote terminal and the customer's premises. Under SBC's proposal, SBC's incumbent LECs combine the capabilities of the plug-in cards and other associated electronics with the subloop elements. Carriers will order these two additional elements as a single combination by submitting a Local Service Request (LSR), which is the process already used to order unbundled network elements.[85]

32. SBC notes that its Advanced Services Affiliate and unaffiliated carriers will use a new provisioning system and a new Graphical User Interface (GUI) to perform tasks related to ordering and provisioning the Broadband Offering.[86] SBC also explains that its new offerings will require carriers (including its separate affiliate) to submit ASRs and LSRs to order the combination of network elements comprising the Broadband Offering.[87] Consistent with their nondiscrimination obligations, SBC's incumbent LECs must offer unaffiliated carriers nondiscriminatory access to the OSS used to provide the Broadband Offering and the integrated voice and data offering discussed below.[88] To the extent carriers must build interfaces to access the necessary databases and systems, SBC's incumbent LECs must provide requesting carriers with all information necessary to build such systems.[89] We note with approval that, in its filings, SBC explains that it will offer OSS assistance to qualifying competitive LECs as part of its obligations under the *Merger Conditions*.[90] We anticipate that such assistance will address concerns raised by Comptel and ATG that SBC's Advanced Services Affiliate will have an undue competitive advantage over unaffiliated carriers when ordering the Broadband Offering.

2. Access to Remote Terminals and Central Offices

33. Access to remote terminals has become increasingly important in recent years. In fact, in the *Local Competition Third Report and Order* we noted that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office."[91] As noted

[85] See *infra* Appendix C; *see also SBC May 24, 2000 Accessible Letters* (describing contain operational and business details of its Broadband Offering).

[86] *SBC April 6, 2000 Ex Parte* at 2-6.

[87] *Id.* at 5. SBC explains that ASRs can be submitted mechanically through the existing EXACT or CESAR systems. Mechanization of the necessary LSRs is available through Electronic Data Interchange (EDI). In addition, SBC's incumbent LECs will offer nondiscriminatory access to a GUI-based system used to submit Customer Information Forms (CIFs), which contains information necessary for the OCD to perform the required routing functions. *See id.* at 2.

[88] *SBC August 2, 2000 Ex Parte* at 1.

[89] We note, for example, that SBC has explained in this and other forums that its incumbent LECs provided certain software development and programming services to its Advanced Services Affiliate in order to build a mechanized system for submitting orders for the Broadband Offering. Pursuant to the nondiscrimination safeguards incorporated through the *Merger Conditions*, SBC's incumbent LECs must provide the same services and information to unaffiliated carriers. In addition, SBC's incumbent LECs have an obligation to cooperate with other parties interested in building similar ordering and provisioning systems in the same manner they cooperate with their Advanced Services Affiliate.

[90] *See SBC April 4, 2000 Ex Parte* at 5 (describing some training methods and procedures SBC's incumbent LECs will provide to competitive LECs); *see also Comptel August 8, 2000 Ex Parte* at 7 (requesting modification to SBC's proposal to make available OSS assistance and training).

[91] *Local Competition Third Report and Order* at para. 218.

above, one of the primary benefits of the separate affiliate condition is that it creates incentives for SBC's incumbent LECs to make collocation available on a nondiscriminatory basis, and to improve their processes for doing so. In the *SBC/Ameritech Merger Order* we noted that competitive LECs experience difficulties accessing remote terminals, and we stated our expectation that the separate affiliate condition would solve these problems.[92] SBC's proposal, as originally presented, would subvert that benefit because ownership of the equipment by SBC's incu nbent LECs would allow them to deploy ADLU Cards (and the associated DSLAM functionality) in their remote terminals and packet switches in their central offices without SBC's separate affiliate experiencing the collocation processes and procedures followed by their competitors.[93]

34. *Collocation in Remote Terminals.* In response to concerns raised by commenters, SBC has committed to make available additional collocation space in its remote terminals.[94] SBC's proposal is described below.

(a) Huts and Controlled Environmental Vaults Installed After September 15, 2000: SBC commits to making 20% of the space available in all huts and CEVs for use by unaffiliated carriers. This commitment applies to all huts and CEVs, which comprise approximately 25% of its remote terminal sites, installed after September 15, 2000.[95]

(b) Cabinets Installed After September 15, 2000: SBC commits to establishing a process by which unaffiliated carriers can collocate in a cabinet pursuant to a special construction arrangement. Specifically, SBC will facilitate collocation by unaffiliated carriers by either: (1) making available approximately 15% of the total space; or (2) providing an adjacent collocation structure (on the incumbent LEC's premises) with all necessary connections to

[92] *See SBC/Ameritech Merger Order* at para. 197, n.357.

[93] *See id.* at para. 363; *see also id.* at Appendix C, para. 4(a)(3) (requiring the separate affiliate to seek collocation on the nondiscriminatory rates, terms, and conditions and by using the same processes made available to unaffiliated carriers).

[94] *SBC July 13, 2000 Ex Parte* at 3-6. SBC states that it has three types of remote terminals: (1) huts, which are large above-ground structures with environmental control capabilities; (2) controlled environmental vaults (CEVs), which are underground structures containing environmental control capabilities; and (3) cabinets, which are usually small above-ground structures. Cabinets generally are used to serve approximately 250 to 3,500 customer lines, although this range varies yet based on developments in plug-in cards and the ability to expand a cabinet's capacity with adjacent structures. Unlike huts and CEVs, cabinets are often designed as integrated systems intended to house a single manufacturer's equipment. Still, some manufacturers build cabinets intended for multi-vendor environments. *See, e.g.*, Lucent Technologies, Inc., THE 82 FAMILY OF OUTDOOR ENCLOSURES 1-2 (1999) (noting that Lucent's outdoor cabinets are designed to house "any vendor's electronics").

[95] Based on SBC's representations, we anticipate that this commitment will enable three to five unaffiliated carriers to collocate equipment in the huts and CEVs of SBC's incumbent LECs. *See Competitive Access to Next Generation Remote Terminals Public Forum Transcript* at 20 (noting that SBC estimates space will be made available for three to five competitive LECs in huts and CEVs); *SBC June 2, 2000 Ex Parte* at 10-11 (noting that SBC plans to make available additional space in huts and CEVs); *SBC Reply* at n.10. In its August 3, 2000 ex parte, Northpoint describes the space, heat, power, and physical interface specifications of the equipment it would seek to collocate in remote terminals. *See* Northpoint *Ex parte* (Aug. 3, 2000) (*Northpoint August 3, 2000 Ex Parte*).

the network.[96] SBC's commitment applies to all cabinets deployed after September 15, 2000. SBC will ensure that competitive LECs have access to power supply, environmental controls, fiber feeder facilities, the copper subloop, and other technical requirements.

(c) Remote Terminals Installed Before September 15, 2000: To facilitate competitive access to remote terminals installed before September 15, 2000, SBC commits to establishing a process by which its incumbent LECs will make available additional space in remote terminals. Specifically, unaffiliated carriers may request that SBC make available additional collocation space, power supply, and other requirements for collocating in the remote terminal.[97] This commitment affords unaffiliated carriers the opportunity to choose a deployment schedule different from the one chosen by SBC.[98]

In light of SBC's commitment, competing providers of advanced services will receive quantifiable assurances that they will be able to access SBC's remote terminals and compete for consumers served through remote terminals. In this way, SBC's commitment should ensure that competing carriers will be able to offer consumers other types of DSL service through equipment deployed in the remote terminals of SBC's incumbent LECs.

35. We conclude that SBC's collocation commitments help ensure that competitive carriers will have access to the remote terminals -- a critical point of the network. We recognize that SBC's proposal may not be ideal for all circumstances, but conclude that this, coupled with the other commitments, is sufficient at this time to address the concerns that led to adoption of the original *Merger Condition*.[99] Facilitating competitive access to remote terminals enables unaffiliated carriers to deploy equipment used to provide different types of DSL service, and thereby mitigates the incentive and ability

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[96] SBC's proposal allows its incumbent LECs the discretion to choose an adjacent structure or additional space within the cabinet. We anticipate that no meaningful competitive difference exists between the two options. We expect, of course, that SBC will make such determinations in good faith and in full cooperation with the requesting carrier.

SBC states that its incumbent LECs will establish connectivity to their networks with an "engineering controlled splice." *SBC July 13, 2000 Ex Parte* at 5. As SBC describes it, an engineering controlled splice is analogous to a cross-connect either in or just outside a remote terminal. Specifically, SBC's incumbent LECs will divert the necessary amount of copper pairs from their NGDLC to the competitive LEC's equipment, which may be placed either inside the remote terminal or in an adjacent structure. The competitive LEC's equipment is then "hardwired" directly to the subloop network element. In its proposal, SBC commits to providing the engineering controlled splice in the most cost-effective manner possible. *See SBC August 2, 2000 Ex Parte* at 10 (describing Proposed Modification Commitment 10). We note that, through the collaborative process proposed by SBC, participants may identify a more efficient process for facilitating collocation at remote terminals than an engineering controlled splice.

[97] *See* 47 C.F.R. § 51.323(f) (3) (requiring incumbent LECs to account for projected demand when planning renovations or constructing new facilities).

[98] SBC intends to upgrade certain existing remote terminals according to a schedule posted on its Internet site. *See* <http://www.sbc.com/PublicAffairs/PublicPolicy/pronto_gateways/Home.html> (listing SBC's planned deployment of NGDLC systems into remote terminals).

[99] *See, e.g., Jato July 24, 2000 Ex Parte* at 4-5 (proposing alternative method for facilitating competitive access to remote terminals); *DATA May 19, 2000 Ex Parte* at 7.

of SBC's incumbent LECs to stifle innovation.[100] In addition, we note that SBC's proposal does not eliminate any options currently available to competitive LECs under our rules, including the right to obtain access to the subloop network element, to collocate in remote terminals (when space is available), and to obtain access to unbundled DSLAM capabilities in certain circumstances.[101] Lastly, we are exploring other methods for ensuring competitive access to remote terminals in a rulemaking, and we note that SBC will be bound by any rules developed in that proceeding.

36. *Collocation in Central Offices*. We also rely on SBC's commitment to allow collocation of Advanced Services Equipment that is similar to the OCDs deployed in the central offices of SBC's incumbent LECs.[102] In this way, we ensure that competing carriers continue to receive the benefits of the separate affiliate condition, even though SBC's incumbent LECs are permitted to own certain Advanced Services Equipment. Under the separate affiliate nondiscrimination safeguards adopted in the *Merger Conditions*, SBC's incumbent LECs must accommodate unaffiliated carriers in the same way they accommodate their Advanced Services Affiliate. For example, if SBC's incumbent LECs allowed their Advanced Services Affiliate to collocate routers in their central offices and remote terminals, they must also allow unaffiliated carriers to collocate routers in comparable locations.[103] Without a modification of the *Merger Conditions*, SBC's Advanced Services Affiliate would collocate the OCD in the central offices of SBC's incumbent LECs. By the express terms of the *Merger Conditions*, unaffiliated carriers would then enjoy the right to collocate (and use as they see fit) the same type of equipment on the same rates, terms, and conditions, even if such equipment may not be strictly necessary for interconnection or access to unbundled network elements.[104] The *Merger Conditions* therefore create a powerful incentive for SBC's incumbent LECs to facilitate collocation of equipment in a way that exceeds the minimum standards established in our rules. SBC's commitment in this regard ensures that competitive LECs will not be stripped of one of the benefits of the separate affiliate condition, which in this instance means

[100] *SBC/Ameritech Merger Order* at para. 205; *see Jato July 24, 2000 Ex Parte* at 1-4.

[101] *SBC June 2, 2000 Ex Parte* at 6; *SBC July 13, 2000 Ex Parte* at 3; *Local Competition Third Report and Order* at paras. 205-29 (discussing the subloop network element), 313 (concluding that incumbent LECs "must provide . . . access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal" unless they permit requesting carriers to collocate DSLAMs in the remote terminal); *see* MCIW Comments at 6; *ATG July 31, 2000 Ex Parte* at 2-5.

[102] *SBC July 13, 2000 Letter* at 6. By "similar Advanced Services Equipment," we mean equipment that performs functions similar to the OCD, such as packet switches.

[103] *See Non-Accounting Safeguards Order* at paras. 197, 221; *see also SBC/Ameritech Merger Order* at para. 3 (incorporating section 272(c) nondiscrimination safeguards). We note that SBC states that its Advanced Services Affiliate will continue to collocate some Advanced Services Equipment, such as packet switches, in the central offices of the SBC incumbent LECs. *See SBC March 22, 2000 Ex parte* at 2. Under the section 272(c) nondiscrimination safeguards incorporated into the *Merger Conditions*, SBC's incumbent LECs must allow unaffiliated parties to collocate packet switches on the same rates, terms, and conditions as provided to their Advanced Services Affiliate.

[104] The D.C. Circuit recently remanded certain aspects of our collocation rules for further consideration. *GTE Service Corp. v. FCC*, 205 F.3d 416 (2000). In particular, the court vacated and remanded for further consideration our earlier rule requiring incumbent LECs to allow collocation of all "used and useful" equipment. *Id.* at 422-24. In response, we have initiated a rulemaking to consider this and related issues. *See Collocation Further Notice* at paras. 70-117.

collocating equipment like the OCD in the central offices of SBC's incumbent LECs.[105]

37. *Competitive Access to Remote Terminals.* SBC also proposes to commence a collaborative process through which competitive LECs, SBC, manufacturers, and other interested parties can explore technical and operational issues related to competitive access to remote terminals.[106] Through these forums, we expect SBC and others to resolve other technical issues related to collocation in remote terminals, such as the availability of a power supply, physical connections to subloops, and full use of the features, functions, and capabilities of the equipment. Similarly, we note that SBC's revised proposal establishes a "special construction arrangement," which will allow competitive LECs to address space, power, connectivity, and related issues in order to collocate in remote terminals.[107] We expect that these forums will provide a means for the industry to develop solutions to the problems related to competitive access to remote terminals. We expect that all parties to such proceedings will address these issues expeditiously and in good faith. We recognize that a risk could exist that the special construction arrangement process would be used to create additional delays or to increase the cost of accessing a remote terminal. To address such risks, SBC modified its proposal to clarify that the special construction arrangement process may be tariffed at the state level.[108] We anticipate that the oversight role played by state commissions, as well as our own oversight and enforcement efforts, will adequately mitigate these risks. Finally, in response to concerns raised by Northpoint, we emphasize that grant of this modification is predicated on SBC participating in these collaborative sessions concurrently with our pending rulemaking proceeding in which we are addressing competitive access to remote terminals.[109]

3. Access to Existing Copper Facilities

38. Another benefit of the separate affiliate condition is that it provides incentives for SBC to provide copper loops to its competitors in the same manner it provides them to its separate affiliate.[110]

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[105] *See Comptel May 18, 2000 Ex Parte* at 1-3.

[106] *SBC July 13, 2000 Letter* at 7-8; *SBC August 2, 2000 Ex Parte* at 2; *see* ATG *Ex parte* at 1-2 (Jun. 27, 2000) (raising issues about access to the subloop from remote terminal locations).

[107] Under our subloop unbundling rules, competitive LECs are entitled to access the subloop at any accessible terminal in the incumbent's outside plant. *Local Competition Third Report and Order* at para. 205. An accessible terminal is "a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the fiber within." *Id.* Our rules also entitle LECs to buy dark fiber and extra copper, if such facilities are available. *Id.* at para. 174; *see Collocation Further Notice* at paras. 119-31 (seeking comment on issues related to subloops, dark fiber, and extra copper). In its revised proposal, SBC commits to facilitating access to the copper subloop and dark fiber by using the special construction arrangement process. *See SBC July 13, 2000 Letter* at 5.

[108] *SBC August 2, 2000 Ex Parte* at 2. SBC indicates that some state commissions have established tariffs addressing special construction arrangements. Such tariffs generally address the costs of the incumbent LEC's time and materials. We note that nothing about SBC's proposal prevents a state commission from requiring SBC to tariff special construction arrangements in the future or to modify an existing tariff.

[109] *Northpoint July 19, 2000 Ex Parte* at 9. SBC revised its July 13, 2000 proposal to respond in part to Northpoint's concerns. *See SBC August 2, 2000 Ex Parte* at 2; *see also Collocation Further Notice* at paras. 103-12.

[110] *SBC/Ameritech Merger Order* at paras. 197, 211. SBC has an obligation to provide access to its unused copper plant, irrespective of the *Merger Conditions*. In the *Local Competition Third Report and Order*, we concluded that incumbent LECs must provide unused copper transmission facilities as an unbundled network element, to the (continued....)

Such access to copper is critical to facilities-based competitive LECs seeking to offer services using xDSL technology.[111] After moving its customers onto its new fiber-served NGDLC systems, however, SBC incumbent LECs will not have as great an incentive to work with competitors to preserve their access to existing copper transmission facilities between the central office and remote terminal.[112] Moreover, because SBC's chosen DSL deployment strategy does not depend on copper transmission facilities, a risk exists that SBC's incumbent LECs will fail to account for the needs of unaffiliated carriers as they deploy the new network architecture.[113]

39. In response to issues raised by commenters in this proceeding, SBC has committed to: (1) refrain from retiring any copper pairs for one year; (2) refrain from retiring (over a three year period) more than 5% of the copper pairs terminated on the Main Distribution Frames of its incumbent LECs' central offices;[114] (3) disclose the incumbent LEC's general decision-making criteria for retiring any copper plant; (4) notify competitive LECs of SBC's intent to retire any copper plant at least 180 days before such retirement; and (5) provide unaffiliated entities an opportunity to buy any copper plant marked for retirement at net book value or the highest competitive bid, whichever is higher.[115] Nothing about SBC's commitment supplants the authority of any state commission to establish rules, policies, and procedures pertaining to the retirement of SBC's copper plant.

40. We conclude that this commitment is an adequate interim measure to ensure that competitors have access to the essential inputs needed to provide advanced services. Our rules already require incumbents to provide unbundled access to the loop, and this commitment provides an additional assurance that competitive LECs will continue to receive access to the entire copper loop from the

(Continued from previous page)
extent such facilities exist. *See Local Competition Third Report and Order* at para. 174; *see also* Jato *Ex parte* at 7 (Jun. 13, 2000) (arguing that the presence of DLC systems does not eliminate the duty to provide copper loops).

[111] *Jato May 23, 2000 Ex Parte* at 2 (noting Jato's intent to use SDSL to serve copper loops up to 30,000 feet in length); Prism Comments at 5-6; *see also Local Competition Third Report and Order* at para. 218 (noting that "competitors seeking to offer services using xDSL technology need to access the copper wire portion of the loop.").

[112] Indeed, in its financial disclosures, SBC states that it plans to move "many customers from the existing copper network to a new fiber network" and that it may shorten the useful life of its existing facilities after migrating customers to its new network architecture. SBC Communications, Inc., ANNUAL REPORT 1999 12 & n.5 (Feb. 11, 2000); *see also* SBC Communications, Inc., INVESTOR BRIEFING: SBC ANNOUNCES SWEEPING BROADBAND INITIATIVE 7 (Oct. 18, 1999) (noting that SBC plans "to move most of its copper-based DS1s to fiber at certain locations"). We also note that, because NGDLC systems also serve voice customers, there are no technical barriers to migrating the incumbent LEC's voice customers to the new network architecture after deployment. *See also Comptel June 8, 2000 Ex Parte*, Transcript at 61-62 (discussing, in collaborative session hosted by the Texas Commission, the migration of customers from copper loops to the NGDLC systems); *Jato July 24, 2000 Ex Parte* at 2-3; *Northpoint July 19, 2000 Ex Parte* at 3; *Mpower August 15, 2000 Ex Parte* at 2-4 (describing past problems arising from the retirement of copper facilities in light of increased deployment of fiber).

[113] *See Jato May 23, 2000 Ex Parte* at 2-3 (noting that Jato plans to rely on SDSL to provide service); *SBC/Ameritech Merger Order* at para. 205 (stating that "by choosing electronics that meet the incumbent's market need, without regard to that of its competitors, the incumbent may stifle competitors' ability to innovate.").

[114] *SBC August 2, 2000 Ex Parte* at 2.

[115] *SBC July 13, 2000 Letter* at 6-7; *see Jato May 23, 2000 Ex Parte* at 2-4; *DATA May 19, 2000 Ex Parte* at 7.

central office to the customer's premises (i.e., "home run copper").[116] In response to concerns raised by commenters, SBC clarified that, in the event a competitive LEC obtains a customer served by the new NGDLC system and the associated fiber, SBC's incumbent LECs will transition such customer back to the existing copper pairs.[117] This will enable competitive LECs to offer service using other types of DSL service. We also expect that SBC's commitment will ensure that consumers receive a choice of DSL services that require access to a full copper loop. By ensuring that competitive LECs will have continued access to the copper plant, SBC's commitment enables these carriers to provide different types of xDSL services. In this way, SBC's competitors will be able to deliver different applications, such as video and voice over DSL, than those chosen by SBC.

4. Access to the Full Features, Functions, and Capabilities at Just, Reasonable, and Nondiscriminatory Rates, Terms, and Conditions

41. We are committed to ensuring consumers have access to a broad array of services and technologies. In the *SBC/Ameritech Merger Order*, we noted that SBC's incumbent LECs have an incentive to stifle innovation by locking their competitors into their choice of technology.[118] We concluded that this incentive, if left unchecked, would most likely grow after the merger and ultimately harm consumers.[119] One goal of the separate affiliate condition is to prevent this type of discrimination by requiring SBC's incumbent LECs to work with their competitors in the same way they work with SBC's Advanced Services Affiliate.[120] Allowing SBC's incumbent LECs to own the Advanced Services Equipment and to provide only ADSL service could detract from this goal by removing the impetus to work with their separate affiliate and the concomitant obligation to cooperate with unaffiliated carriers to develop other product offerings. Because SBC is focused on its own business needs and target markets, it has little incentive to cooperate with competing carriers that wish to pursue different approaches and may decide against implementing certain capabilities of the equipment. We therefore agree with DATA and others that permitting SBC's incumbent LECs to own this equipment, without any offsetting commitments by SBC, could stifle innovation by locking competing providers into SBC's choice of technologies.[121]

42. SBC's proposal, as modified in this proceeding, will help ensure that consumers will

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[116] *Northpoint July 19, 2000 Ex Parte* at 4; *see Local Competition Third Report and Order* at para. 174; *see also Collocation Further Notice* at paras. 129-31 (seeking comment on incumbent LEC policies regarding the replacement of copper pairs).

[117] *SBC August 2, 2000 Ex Parte* at 1-2. We note that SBC is already obligated to do so under our loop unbundling rules.

[118] *SBC/Ameritech Merger Order* at para. 205 (noting that, by virtue of their control over the loop, SBC's incumbent LECs may make it difficult for other carriers to offer new services).

[119] *Id.* at paras. 207-11.

[120] *Id.* at paras. 363, 444; *Non-Accounting Safeguards Order* at paras. 210, 229; *see* DATA Comments at 19-22 (advocating an open process for introducing new network designs).

[121] DATA Comments at 4-7 (noting that SBC does not plan to use other features of the equipment); *Caprock May 18, 2000 Ex Parte* at 5-6; ALTS Comments at 10; *ATG May 19, 2000 Ex Parte* at 1-2; *Prism June 30, 2000 Ex Parte* at 3; Jato May 23, 2000 Ex Parte at 2-5; @Link Ex parte at 1-4 (Jun. 30, 2000) (*@Link June 30, 2000 Ex Parte*).

have a wide array of choice. Specifically, SBC commits to making available all features, functions, and capabilities of the equipment installed in remote terminals at just, reasonable, and nondiscriminatory rates, terms, and conditions.[122] For example, under this commitment, SBC's incumbent LECs will provide additional classes or qualities of service, other bit rate offerings, different combinations of permanent virtual connections, remote testing, and other features, functions, and capabilities made available by the manufacturer. SBC's commitment applies both to existing and to future features, functions, and capabilities. Should the manufacturer develop new features or plug-in cards with different capabilities, SBC's commitment provides a process for competitive LECs to seek such capabilities.[123] Competitive LECs may request existing and future features, functions and capabilities either through SBC's public forums or by contacting SBC directly. We view this commitment as critical to ensuring that the SBC incumbent LECs do not discriminate against competitors wishing to innovate and to use the full features, functions, and capabilities of the equipment. Through this commitment, SBC's competitors will receive assurances that SBC's incumbent LECs will not restrict the use of the equipment to the method of operation chosen by SBC, thus restricting competition and innovation in the advanced services marketplace.

43. We find that the collaborative session process in SBC's proposal adequately addresses the requests of AT&T, DATA, and others concerning the on-going development of new services and the risk that SBC's incumbent LECs will discriminate in favor of their chosen technology.[124] As AT&T points out, the nondiscrimination safeguards that apply under the *Merger Conditions* place an obligation upon SBC's incumbent LECs to cooperate with unaffiliated parties in the establishment of standards and the development of new services such as the Broadband Offering.[125] The collaborative sessions provide a regular forum for competitive LECs to have their own needs considered and met on an equivalent basis to SBC's Advanced Services Affiliate.[126] Furthermore, granting SBC's request does not eliminate the separate affiliate condition. SBC's Advanced Services Affiliate will continue to perform its own network planning and engineering services, which we would expect will require the separate affiliate to work with SBC's incumbent LECs to deploy new features, functions, and capabilities of the plug-in cards and other equipment. As a result of working with SBC's Advanced Services Affiliate, SBC's incumbent LECs incur a duty to cooperate with unaffiliated carriers in the same way.[127] We therefore find that SBC's proposed collaborative process supplements rather than replaces the separate affiliate condition by establishing a well-publicized forum for carriers (including SBC's Advanced Services

[122] *SBC July 13, 2000 Ex Parte* at 2-5. We note that, to the extent SBC's incumbent LECs have an obligation to unbundle a specific network element under our rules, they already have an obligation to provide access to the full features, functions, and capabilities of that network element in accordance with the pricing methodology applicable to network elements under section 251. *See* 47 U.S.C. § 153(29) (defining network elements as including the full features, functions, and capabilities of equipment used to provide telecommunications services).

[123] *SBC July 13, 2000 Ex Parte* at 2-3; *see @Link Ex parte* (Jun. 30, 3000) (*@link June 30, 2000 Ex Parte*); Indiana Regulatory Utility Commission *Ex parte* at 1 (Mar. 24, 2000).

[124] *AT&T August 23, 2000 Ex Parte* at 3.

[125] *Id.* at 2; *see Non-Accounting Safeguards Order* at paras. 202-35 (incorporated into the *Merger Conditions* through *SBC/Ameritech Merger Order* at Appendix C, para. 3).

[126] *See AT&T August 23, 2000 Ex Parte* at n.2 (citing *Non-Accounting Safeguards Order* at paras. 197, 208).

[127] *See Non-Accounting Safeguards Order* at paras. 208-11 (incorporated into the *Merger Conditions* through *SBC/Ameritech Merger Order* at Appendix C, para. 3).

Affiliate) to work with SBC's incumbent LECs to deploy other features, functions, and capabilities of the plug-in cards and other equipment.

44. We recognize that making available the full features, functions, and capabilities of the equipment may require SBC to resolve unforeseen technical and operational issues. Moreover, we understand that there may be capacity issues, in that potentially competitors may seek features that would use much of the available bandwidth of a particular feeder line. We expect that the collaborative process established by SBC will create a forum for exploring these issues. We presume that all features, functions, and capabilities made available by the manufacturer are technically and operationally feasible unless persuaded otherwise. We expect that this presumption of acceptability will facilitate access to other features, functions, and capabilities of the equipment because SBC will have to prove that a requested feature, function, or capability is not technically feasible or will impede the provision of SBC's own services. To facilitate the identification of the applicable features, functions, and capabilities, SBC will post on an Internet site the manufacturers' description of the equipment.[128] In the event SBC fails to accommodate technically feasible requests or improperly alleges capacity restraints, parties are free to take advantage of the alternative dispute resolution commitment already contained in the *Merger Conditions*,[129] to file a section 208 complaint with the Commission alleging a violation of these commitments, or to pursue other remedies before any other appropriate authority.

45. By unleashing the full potential of the equipment, SBC's commitment will help competitive LECs provide innovative, exciting new services.[130] Competitive LECs will be able to use additional "Quality of Service" Classes (QoS Classes) that will enable them to differentiate their product offerings from SBC's Advanced Services Affiliate. For example, SBC plans to use only the Unspecified Bit Rate (UBR) QoS Class in order to deliver high-speed Internet access to the mass market. Although UBR is suitable for high-speed Internet access, it is not suited for more bandwidth-intensive applications like carrier-grade voice over DSL.[131] Under its final proposal, SBC will offer such existing features as Constant Bit Rate (CBR) and "virtual paths," which allow competitive LECs to offer carrier-grade voice over DSL and other bandwidth-intensive applications.[132] We conclude that SBC's commitment will help Northpoint, Caprock, ATG, and other carriers differentiate their product offerings to compete more effectively in SBC's region.

46. SBC's commitment will also ensure that consumers benefit from the innovation of manufacturers in developing enhancements to the equipment. SBC will allow unaffiliated carriers to

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[128] *SBC August 2, 2000 Ex Parte* at 2.

[129] *SBC/Ameritech Merger Order* at Appendix C, para. 54 (establishing an alternative dispute resolution mechanism for resolving "carrier-to-carrier disputes"). Pursuant to the *Merger Conditions*, the alternative dispute resolution mechanism is voluntary for both competitive LECs and state commissions.

[130] *Northpoint May 11, 2000 Ex parte* (stating that a condition to make available the full functionality of the equipment will allow SBC's competitors to deliver services not provided through SBC's chosen technology, such as interactive multimedia and voice over DSL); *DATA May 19, 2000 Ex Parte* at 6 (listing additional capabilities of ADLU Cards).

[131] *See* DATA Comments at 6-7; *Jato June 13, 2000 Ex Parte* at 8; *Comptel June 8, 2000 Ex Parte* at 3; *Mpower March 22, 2000 Ex Parte* at 6.

[132] *SBC July 13, 2000 Ex Parte* at 5-6.

take advantage of upgraded features, such as new plug-in cards used to provide other forms of DSL.[133] Indeed, this commitment may provide competing carriers an incentive to work directly with the manufacturers to develop features and enhancements that meet their own needs.[134] As a result, SBC's competitors will have a greater ability to differentiate their product offerings and will not be locked into the features chosen by SBC. Such a commitment also addresses any incentive SBC may have to refrain from implementing additional features of existing equipment as they are released.

5. Combined Voice and Data Offering

47. In response to concerns raised by ATG, Comptel, and others, SBC modified its proposal to include an offering tailored to the needs of integrated voice and data providers.[135] Specifically, SBC commits to offering a Combined Voice and Data Offering, which builds upon the combination of network elements that comprise its Broadband Offering.[136] SBC's incumbent LECs will provide the integrated voice and data configuration by offering carriers the underlying voice loop over its NGDLC systems delivered directly to the Main Distribution Frame (or a higher-speed frame, such as a DSX-1 or DSX-3 cross-connect frame) in their central offices and combining that loop with the Broadband Offering.[137] The Combined Voice and Data Offering will provide carriers the ability to use the voice portion of the loop just as they would any other voice loop, while complementing their offering with the capability to provide the ADSL service made available by SBC's incumbent LECs.[138] Carriers will order SBC's combination offering in the same manner as they order its Broadband Offering.

48. An integrated voice and data offering enables SBC's competitors to deliver a bundled package of services to consumers and thereby compete more effectively against SBC in both the voice telephony and data services markets.[139] We find that this commitment addresses the concerns raised by Northpoint that SBC's incumbent LECs might limit its Broadband Offering to prevent carriers from competing with its standard voice offerings.[140] In its final proposal, SBC elaborates upon its commitment

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[133] SBC's commitment will ensure that unaffiliated carriers will not be locked into SBC's choice of technology and deployment schedule. We note, for example, that one of SBC's manufacturers of plug-in ADLU Cards indicates that it has plans to implement other forms of DSL in coming months (thereby offering HDSL Digital Line Unit Cards and VDSL Digital Line Unit Cards). *See* Alcatel Reply at 2. Other vendors indicate they have plug-in cards with different features, functions, and capabilities from the ADLU Card. *See SBC May 25, 2000 Ex Parte* at 2 (summarizing capabilities of different manufacturers' plug-in cards). We understand SBC's commitment to apply to new plug-in cards developed by its manufacturers.

[134] @Link *Ex parte* at 1-2 (Jul. 26, 2000); *see ATG July 31, 2000 Ex Parte* at 7 (discussing need to apply market pressure to manufacturers of SBC's NGDLC systems).

[135] *See Caprock May 18, 2000 Ex parte* at 5-6 (contending that the NGDLC architecture prohibits Caprock from providing lifeline voice and DSL service); *Prism June 30, 2000 Ex Parte* at 2; *Comptel May 18, 2000 Ex Parte* at 5; AT&T Reply at 3.

[136] *SBC July 13, 2000 Ex Parte* at 2.

[137] *SBC May 25, 2000 Accessible Letter* at 20.

[138] *Id.*

[139] *SBC July 13, 2000 Ex Parte* at 2.

[140] *See Northpoint July 19, 2000 Ex Parte* at 7.

to make available an integrated voice and data offering.[141] SBC commits to making its Combined Voice and Data Offering available no later than 90 days after the release of this Order. SBC further commits to pricing its integrated voice and data offering in accordance with the pricing methodology then applicable to unbundled network elements under sections 251 and 252. To ensure that its wholesale customers receive nondiscriminatory access, SBC commits to implementing performance measurements no later than 120 days after introducing the combined offering.

6. Other Proposed Conditions

49. We decline to adopt other proposals beyond those noted above. As SBC points out, this proceeding is focused on the ownership of equipment used to provide advanced services, and the effect of SBC's proposed ownership arrangement on the separate affiliate condition. Commenters proposed a wide range of potential conditions, including a temporary ban on providing advanced services, line card interoperability, and extending the duration of the *SBC/Ameritech Merger Conditions*.[142] As noted above, this Order addresses only the narrow question of ownership of certain Advanced Services Equipment under the *Merger Conditions*. As a result, we do not think it appropriate to consider or in any way prejudge these proposals in the context of this proceeding. We recognize, however, that the issues involved with competitive access to remote terminals are difficult and complex, and we fully intend to evaluate these and related issues in the context of our pending collocation rulemaking proceeding.[143] In addition, we have added explanatory notes to SBC's proposal in order to clarify concerns raised on the record.[144] We discuss the major issues raised by parties in the paragraphs below.

50. *Mandatory Transition Period.* Comptel contends that we should prohibit SBC's incumbent LECs from making available their Broadband Offering for at least 90 days.[145] Comptel contends that this mandatory transition period is necessary to afford competitive LECs an opportunity to understand the Broadband Offering and develop expertise in the associated ordering and provisioning processes.[146] We conclude that such a mandatory transition period is not necessary in light of SBC's commitment to make available the Broadband Offering to all carriers (including its Advanced Services Affiliate) at the same time. We note that SBC has worked to educate its wholesale customers by hosting a series of collaborative sessions in which SBC employees have explained the Broadband Offering, the associated ordering and provisioning processes, and answered questions posed by competitive LECs.[147]

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[141] *SBC July 13, 2000 Ex Parte* at 2.

[142] *See DATA May 19, 2000 Ex Parte* at 5-7; *Comptel May 18, 2000 Ex Parte* at 4; *Jato May 23, 2000 Ex Parte* at 3 (asserting that SBC should be required to maintain its copper plant for at least 10 years); *Jato June 13, 2000 Ex Parte* at 9.

[143] We note, however, that extending the duration of the *Merger Conditions* will not be considered in the *Collocation Further Notice*.

[144] *See, e.g., AT&T August 23, 2000 Ex Parte* at 1-5; *ALTS July 21, 2000 Ex Parte* at 1; *ATG July 31, 2000 Ex Parte* at 6-7. Such explanatory footnotes do not limit our interpretative authority with respect to other aspects of the commitments.

[145] *Comptel August 8, 2000 Ex Parte* at 6-7.

[146] *Id.*

[147] *See, e.g., SBC March 8, 2000 Ex Parte* at 1-49.

Finally, we note that the *Merger Conditions* already provide for OSS training for qualifying competitive LECs, and that training on the necessary ordering and provisioning processes falls within the scope of the existing *Merger Conditions*.[148]

51. *UNE-Platform Issues*. AT&T contends in a recently filed ex parte that SBC's proposal fails to recognize other technically feasible methods of obtaining access to the Broadband Offering, such as cross-connecting the voice path to the unbundled local switching element instead of a competitive LEC's collocation space.[149] AT&T argues that modifying SBC's proposed commitments to eliminate references to collocation in the serving central office would permit carriers that rely on the platform of unbundled network elements (UNE-P) to pursue their chosen entry strategies.[150] We decline to modify SBC's commitments in the manner AT&T requests at this time. However, we are considering AT&T's arguments relating to the use of UNE-P to provide DSL service and line splitting in the *Local Competition* and *Line Sharing* proceedings in which we will be able to more fully evaluate the policy arguments and technical issues based on a fuller record.[151]

52. *Extending the Duration of the Merger Conditions*. We reject Jato's argument that the conditions intended to preserve competitive access to existing copper facilities should be extended beyond the duration of the Merger Conditions.[152] As noted above, SBC requires a modification of the *Merger Conditions* because we are classifying the plug-in card and associated OCD as Advanced Services Equipment under the *Merger Conditions*. Similarly, DATA contends that we should extend the effective date of the separate affiliate so that SBC must petition for Commission approval before retiring its Advanced Services Affiliate.[153] In the *SBC/Ameritech Merger Order*, however, we found that a general three-year duration of the *Merger Conditions* (and 42 months for the separate affiliate) would be sufficient to mitigate the potential adverse effects of the merger.[154] For the reasons expressed in the *SBC/Ameritech Merger Order*, we decline to extend the effective date of the *Merger Conditions* beyond the general three-year term.

53. *Preserving Existing Copper Facilities*. Jato, AT&T, and Northpoint express concern that SBC's commitments could allow SBC's incumbent LECs to perform targeted mass retirements, i.e., retire 100% of the copper facilities in certain areas and still maintain an overall retirement rate of less than 5%.[155] In addition, Jato contends that SBC should adopt a 3% threshold instead of a 5% threshold.

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[148] *See SBC/Ameritech Merger Order* at Appendix C, para. 36.

[149] *AT&T August 23, 2000 Ex Parte* at 4.

[150] *Id.*

[151] Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Public Notice (Feb. 28, 2000) (noting that petitions for reconsideration and/or clarification were filed regarding the *Local Competition Third Report and Order* and the *Line Sharing Order*).

[152] *See Jato May 23, 2000 Ex Parte* at 3 (asserting that SBC should be required to maintain its copper plant for at least 10 years); *Mpower August 15, 2000 Ex Parte* at 4.

[153] *DATA May 19, 2000 Ex Parte* at 7.

[154] *SBC/Ameritech Merger Order* at para. 510.

[155] *Jato July 25, 2000 Ex Parte* at 2-3; *Northpoint July 19, 2000 Ex Parte* at 2-4; *AT&T August 23, 2000 Ex Parte* at 4-5.

In response to these concerns, SBC modified its proposal to include a commitment to refrain from retiring any copper pairs prior to September 1, 2001, in addition to the overall 5% threshold over a period of three years.[156] We conclude that this modified retirement commitment adequately addresses the risk in the near term that SBC will retire copper pairs in a way that disrupts service to its competitors. To the extent experience with these commitments reveals a practice of disruptive targeted mass retirements after September 1, 2001, Jato and other carriers are free to pursue remedies before the Commission or any other appropriate authority. We note that the issue of retirement of copper is raised in the *Collocation Further Notice*.[157]

54. We decline to accept the suggestion of Northpoint, AT&T, and Jato to modify SBC's proposal to explicitly clarify the definition of "mainframe terminated copper."[158] AT&T suggests that SBC's proposal expressly state that mainframe terminated copper refers to a continuous copper pathway (consisting of generally recognized operational parameters) connecting a customer premise to an SBC incumbent LEC's serving central office.[159] Because we find that the term mainframe terminated copper already encompasses AT&T's request, we decline to modify SBC's proposal to make this definition more explicit.

55. *SBC's Discretionary Authority*. Several parties raise concerns about the risk that SBC will abuse its discretionary authority during the collaborative sessions.[160] We recognize that SBC's incumbent LECs may have an incentive to discriminate against technology choices made by other carriers. We emphasize that we expect all parties – including SBC's incumbent LECs and its Advanced Services Affiliate – to participate in good faith to implement additional features, functions, and capabilities of the equipment, to develop solutions to competitive access to remote terminals, and to address other issues that arise during the collaborative sessions. We expect our presumption that all features, functions, and capabilities made available by the manufacturer are technically feasible should provide competitive LECs with an assurance that SBC cannot unilaterally and arbitrarily refuse to provide certain features. Finally, we note that carriers may seek redress before the Commission or other authorities in the event problems arise during the collaborative sessions.

56. *Mandatory Technical Trials*. We decline Comptel's suggestion that we require SBC's incumbent LECs to host a series of technical trials aimed solely at demonstrating that SDSL technology will not be disrupted by newly-deployed remote terminals.[161] SBC is, of course, already prohibited from discriminating in favor of the technology chosen by its separate affiliate by deploying electronics that disrupt that ability of competitive LECs to provide different services using different technologies.[162] We

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[156] *SBC August 2, 2000 Ex Parte* at 2.

[157] *Collocation Further Notice* at paras. 124, 129-31.

[158] *Northpoint July 19, 2000 Ex Parte* at 4; *AT&T August 23, 2000 Ex Parte* at 4-5; *Jato July 25, 2000 Ex Parte* at 2.

[159] *AT&T August 23, 2000 Ex Parte* at 4.

[160] *ATG July 31, 2000 Ex Parte* at 7; *Northpoint July 19, 2000 Ex Parte* at 7; *AT&T August 23, 2000 Ex Parte* at 4-5; *Comptel August 8, 2000 Ex Parte* at 10.

[161] *Comptel August 8, 2000 Ex Parte* at 9.

[162] *See SBC/Ameritech Merger Order* at para. 205; *Non-Accounting Safeguards Order* at paras. 208-11.

expect that good faith participation in the collaborative sessions by all parties will ensure that SBC's incumbent LECs and competitive LECs can deploy new services without adversely affecting the ability of others to provide competing services.

57. *Providing DSL Modems at Cost.* We decline Comptel's suggestion that we require SBC's incumbent LECs to provide DSL modems at cost to unaffiliated carriers.[163] To the extent that SBC's incumbent LECs provide DSL modems to their Advanced Services Affiliate, the relevant nondiscrimination safeguards in the *Merger Conditions* require SBC's incumbent LECs to provide such modems to unaffiliated carriers on the same rates, terms, and conditions. Because all such transactions must be posted on the separate affiliate's Internet site, unaffiliated carriers have the ability to monitor the relationship between SBC's incumbent LECs and their Advanced Services Affiliate and to obtain the same goods, services, and information made available to the affiliate. We therefore find it unnecessary to establish an additional procedure to ensure competitive LECs can receive low-cost DSL modems. In addition, we expect the collaborative sessions to address Comptel's concerns about acquiring modems that are compatible with the plug-in cards because SBC must cooperate with unaffiliated parties in good faith.[164] During these sessions, SBC should make available information that competitive LECs need to evaluate whether their equipment is compatible with the plug-in cards chosen by SBC.

58. *Minimum Discount Plans.* We decline to adopt AT&T's suggestion to modify SBC's proposal to expressly prohibit minimum discriminatory price structures plans that favor SBC's Advanced Services Affiliate.[165] Because discriminatory practices like targeted pricing plans are already prohibited by the nondiscrimination safeguards that apply to SBC's incumbent LECs and its separate affiliate, we see no need to further clarify SBC's proposal.[166] In addition, we note that the prices for SBC's offerings are subject to the normal state review process.[167]

7. Other Issues

59. As a final matter, we disagree with Comptel that SBC's Project Pronto constitutes a *per se* violation of the "network planning and engineering" provisions of the *Merger Conditions*.[168] As Comptel points out, the *Merger Conditions* allow SBC's incumbent LECs to perform limited network planning and engineering services on behalf of their Advanced Services Affiliate until April 5, 2000 in order to allow an efficient transfer of existing advanced services customers.[169] Network planning and

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[163] *Comptel August 8, 2000 Ex Parte* at 9.

[164] *Id.* at 9.

[165] AT&T August 23, 2000 Letter at 3.

[166] *See, e.g., Non-Accounting Safeguards Order* at paras. 197, 256-58.

[167] *See SBC August 8, 2000 Ex Parte* at 1 (stating that SBC has no objection to resolving pricing disputes through the normal § 252 state arbitration process).

[168] *Comptel August 8, 2000 Ex Parte* at 6; Comptel *Ex parte* at 2-3 (Apr. 26, 2000) (*Comptel April 26, 2000 Ex Parte*). The *Merger Conditions* define "network planning and engineering" services as network planning, engineering, design, and assignment services for Advanced Services Equipment. *See SBC/Ameritech Merger Order* at Appendix C, paras. 3(c)(3), 4(n)(4).

[169] *Comptel April 26, 2000 Ex Parte* at 2.

engineering services include such functions as determining where, when, and how much Advanced Services Equipment must be deployed, creating and maintaining certain customer records, designing advanced services offerings, identifying network components needed to provide advanced services, and assigning equipment (e.g., DSLAMs, ports on ATM switches) to customers.[170] Although we agree with Comptel that network planning also includes such functions as choosing specific equipment and determining how best to provide service to consumers, we reject Comptel's arguments that the SBC incumbent LECs violated the network planning provisions of the *Merger Conditions* by planning to deploy plug-in cards in remote terminals as part of Project Pronto.[171] During this proceeding, SBC provided evidence that it decided to use plug-in cards installed in remote terminals to provide DSL service in early 1999, well before we adopted the *Merger Conditions*.[172] Comptel has not provided evidence to show that SBC's incumbent LECs improperly provided network planning services with regard to the deployment of plug-in cards in remote terminals as part of Project Pronto after the transition period, which ended on April 5, 2000.[173] Based on the record before us in this proceeding, we have no basis for concluding that SBC has violated this *Merger Condition*. This conclusion does not prejudge the outcome of any investigation of this issue. We would expect to take swift enforcement action in the event we found that SBC's incumbent LECs improperly provided network planning and engineering services after the 180-day transition period. Consistent with its obligations under the *Merger Conditions*, we expect SBC's Advanced Services Affiliate to perform all network planning and engineering functions, such as choosing where and how to serve consumers, after April 5, 2000.[174]

IV. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309 that permission for SBC's incumbent LECs to own and operate certain advanced services equipment installed in remote terminals and in their central offices IS GRANTED to the extent indicated herein.

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[170] *See SBC/Ameritech Merger Order* at Appendix C, para. 3(c)(3), 4(a), 4(c), 4(d), 4(e). We interpret network planning and engineering services as addressing certain tasks up to – but not including – ordering telecommunications services, interconnection facilities, and network elements used to provide advanced services. *See, e.g., id.* at Appendix C, para. 4(f). In addition, the *Merger Conditions* expressly limit permissible network planning and engineering services to only those functions related to Advanced Services Equipment. *See id.* at paras. 3(c)(3), 4(n)(4).

[171] *See Comptel August 8, 2000 Ex Parte* at 6; *Comptel April 26, 2000 Ex Parte* at 2.

[172] *See SBC March 8, 2000 Ex Parte* at 26-27 (indicating that that SBC chose the plug-in card approach in January 1999); *SBC March 1, 2000 Ex Parte* at 10 (providing technical descriptions of the plug-in cards dated July 1999); *SBC June 2, 2000 Ex Parte* at 8 (noting that SBC made its technology decisions before the merger).

[173] Pursuant to the *Merger Conditions*, SBC's incumbent LECs must cease performing all network planning and engineering services no later than April 5, 2000, which was 180 days after the Merger Close Date. *See SBC/Ameritech Merger Order* at Appendix C, paras. 3(c)(3), 4(n)(4.

[174] As of the date of the release of this Order, SBC's incumbent LECs are authorized to perform the network planning and engineering functions associated with owning and deploying the plug-in cards and OCDs described in this Order. Performing network planning and engineering services related to the plug-in cards and OCDs by SBC's incumbent LECs would be in addition to – not in lieu of – network planning and engineering functions performed by SBC's Advanced Services Affiliate.

61. IT IS FURTHER ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309 that such permission IS CONDITIONED upon the terms specified in Appendix A and to the extent described herein.

62. IT IS FURTHER ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309, that Paragraph 3(d) of the *Merger Conditions* contained in the *SBC/Ameritech Merger Order* is MODIFIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary